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Transmittal #2

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## **PART II INVESTIGATIVE PROCESS**

### **A. TYPES OF COMPLAINTS**

The fraud investigator handles complaints referred by a number of sources, including the local agency and the Division of Fraud Management (DFM).

#### **1. Local Agency Initiated**

Each local agency benefits program, Child Care, or Social Worker is responsible for referring all cases of suspected fraud, including provider or vendor fraud, to the local agency fraud investigator. Cases to be referred include those in initial application status as well as approved cases, both

open and closed.

2. Complaints Received by the Division of Fraud Management  
The Virginia Department of Social Services, Office of Audit Services, Division of Fraud Management, often receives allegations of public assistance fraud. Complaints referred by the DFM to the local agency include:

a. Reports by Private Citizens

Private citizens, including anonymous callers, often make reports concerning a client's circumstances which the caller believes have not been either reported or not truthfully reported. (See APPENDIX 1, Citizen and Anonymous Referrals).

b. DCSE Hearing Officer Reports

Other allegations of public assistance fraud come to the unit according to established procedures from DCSE Hearing Officers.

These complaints usually involve unreported child support

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payments made directly to a client by a Non Custodial Parent, or the unreported presence of the responsible parent in the client's home.

c. Whistle Blower Complaints

Allegations of Food Stamp fraud are received from a hotline operated by the USDA. These "Whistle Blower" complaints are forwarded by USDA to the DFM which refers them to the local agency for investigation.

d. Computer Matches

Fraudulent situations are sometimes discovered as a result of various matches periodically conducted by the DFM. Information about these situations is sent by the DFM to the appropriate local agency for investigation.

## **B. PROGRAMS INVESTIGATED**

### **1. Benefit Programs**

With the exceptions of Medicaid-only cases and Food Stamp trafficking involving retail establishments, all benefit program cases involving suspected fraud are investigated by the local agency fraud investigator. The exceptions to local agency fraud responsibilities are outlined below.

a. Food Stamp Trafficking Investigations

Trafficking is the selling or trading of food stamp benefits for cash, drugs, guns, or in exchange for some other benefit, such as rent payment or gasoline. In order for trafficking to occur, there must be a person to sell or trade the food stamps or Electronic Benefit Transaction (EBT) card and a person to receive them who is authorized to redeem them. Generally food stamp benefits are sold or traded for half their face value.

For example, a client sells \$100.00 worth of food stamps to a drug dealer and receives \$50.00 worth of drugs. The drug dealer must either be an authorized retailer himself or be able to further the transaction through an authorized retailer.

The investigation of an allegation of food stamp trafficking specific to a retail establishment is the responsibility of the Food and Nutrition Services. The local agency must report any allegations of food stamp trafficking by a retailer to the appropriate FNS Field Office using the Food Stamp Complaint form. (See PART XIV, Form #2. A list of these field offices is provided in APPENDIX 2).

**Note: The investigation of an allegation involving a client trafficking in food stamps is handled by the local agency. Prior to beginning an investigation, the local agency should consult with the appropriate field office of FNS. It is possible that the field office already has the client under investigation in connection with another case or a retailer. At the request of FNS, the local agency may postpone its investigation if it will negatively impact the investigation in progress or a planned operation.**

When the local agency does investigate the allegation, the agency will interview the client and explain the proper use of food stamps and the penalties that can be imposed if trafficking is proven. FNS has developed a form letter that can be used for this purpose (See PART XIV, Form #3, Sample Client Letter). The letter can be mailed or hand-delivered to the client.

#### b. Medicaid-Only Cases

DMAS is responsible for investigating allegations of Medicaid fraud when the client is not also receiving a money payment (TANF or General Relief). The local agency must promptly refer these allegations to DMAS utilizing the Medicaid Only Referral form. (See PART XIV, Form #4 and Form #4a [Instructions for completing Form #4]).

#### 2. Service Programs

The local agency fraud investigator is also responsible for the investigation of service program cases, such as Child Care, if a client is suspected of having committed fraud. It is recommended that the Commonwealth's

Attorney be consulted on cases involving fraud committed by licensed adult or Child Care businesses.

### **C. INVESTIGATION PROCEDURES**

#### **1. Qualitative Standards for Conducting Investigations**

Qualitative standards apply to the management functions and processes in which investigators perform. They address the 'how to' criteria.

In any type of investigation, there are seven critical standards that must be addressed if the effort is to be successful. These standards are:

*Planning, Execution, Reporting, Objectivity, Completeness, Timeliness, and Accountability.*

##### **a. Planning**

The first qualitative standard for investigative organizations is:

*Investigative priorities should be established and objectives developed to ensure that individual case tasks are performed*

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*efficiently and effectively.*

This standard recognizes the general limitation of available resources and requires that attention be given to the establishment of case priorities. This should be extended to both qualitative and quantitative aspects and the proper degree of supervision should be carefully considered. This may best be achieved by preparing an investigative plan. The plan should set forth the nature of the investigation while specifically listing the substantive issues to be developed, a specific plan of action, the estimated required manpower, expected completion date and anticipated results or accomplishments.

##### **1) Guidelines**

##### **Individual Case Planning**

In order to conduct investigations, each case investigated should address the following:

- a) Upon receipt, each complaint is logged in
- b) The complaint then must be evaluated against the investigative functions, priorities, and guidelines for one of the three decisions:

- Initiate investigative activity
- Refer to another appropriate authority
- Not found or no action.

- c) If the decision is to initiate investigative activity, prepare, if appropriate, an investigative plan of action, as soon as possible. This includes as much of the

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following information as deemed necessary:

- Determine whether the nature of the investigation is criminal, civil, or administrative
- Determine elements of proof or critical elements
- Determine solvability of complaint, if appropriate
- Coordinate the decision to open an investigation with appropriate authority
- Identify and rank the investigative requirements necessary to satisfy investigative goals
- Determine the resources necessary to meet investigative requirements, including the probable cost of investigation
- Identify the best approach to take during the investigation in order to resolve the allegations
- Determine the initial scope of the investigation, ensuring that all essential leads are followed
- Establish a time phased approach that ensures individual leads are accomplished on a timely basis and periodic evaluations of progress occur
- Coordinate investigative actions with investigative function elements and others, as necessary
- Determine the format to be used to report results
- Ensure that investigative steps include the identification of any causative factors that can be

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reported as weaknesses requiring corrective action by management.

#### b. Execution

The second qualitative standard for investigative organizations is:

*Investigations are conducted timely, efficiently, thoroughly and in a legal manner.*

The investigator is a fact-gatherer and should not allow conjecture, unsubstantiated opinion, or bias affecting work assignments. He or she has a duty to be equally receptive to evidence that is exculpatory, as well as incriminating. Interviews of subjects and witnesses should be conducted in an effective manner. The collection of evidence should be undertaken in such a way as to ensure that all relevant material is obtained, the chain of custody is preserved, and the evidence is properly admissible in a subsequent proceeding.

#### 1) Guidelines

With regard to the conducting of interviews, the following

guidelines should be considered:

a) Impartiality

All interviews conducted in a fair and impartial manner with the objective of obtaining the most accurate, relevant, timely and complete information from the sources

b) Prior Preparation

A review of known information precedes a planned

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interview

c) Full Identification

An investigator fully identifies himself/herself, with the proper identification, and states the purpose of the interview to the interviewee, if appropriate

d) Complete Information

Relevant personal data, including, but not limited to, full name, personal and business address, and occupation obtained from the interviewee

e) Related Information

When conducting an interview, particular attention is given to obtaining the interviewee's observation of incidents and the actions or statements of other persons connected with the event

f) FOIA and Privacy

The investigator should bear in mind the interviewee's access to information through the Freedom of Information Act (5 U.S.C. 522) and under provisions of the Privacy Act, (5 U.S.C. 552a)

g) Inclusion in Reports

All interviews are subject to inclusion in reports

h) Retention of Notes

Any extra interview notes prepared in a criminal investigation retained as a separate section in the

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case file

i) Joint Interviews

Consideration given to conducting interviews with more than one investigator in situations that is potentially hazardous or compromising.

c. Reporting



The third qualitative standard for investigative organizations is:  
*Reports must thoroughly address all relevant aspects of the investigation and be accurate, objective, timely, understandable, and logically organized.*

As benefits the investigative process, this standard requires that report writing receive primary attention. Whether the report is in oral or written form, it must clearly and concisely reflect the results of the investigator's efforts. It should be presented in straightforward, grammatically correct language, avoiding the use of unnecessary, obtuse, and confusing verbiage. Graphics should be well prepared, clearly relevant to the investigation, and supportive of the presentation.

#### 1) Guidelines

In pursuing this standard, the following guidelines should be considered:

##### a) Written Reports

Written reports should address the following elements:

- The facts are set forth to facilitate reader

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comprehension

- The principles of good report writing must be adhered to. A quality report will be logically organized, accurate, complete, brief, impartial, and clear
- An investigative report will not require substantial correcting or rewriting, and will be submitted timely
- Reports should clearly record or reference all pertinent interviews
- Reports or case files should reflect what the investigation accomplished. This would include fines, savings, recoveries, indictments, convictions, adjudication's, and management recommendations.

##### b) Preparation Guidelines

The following guidelines apply to the preparation of all investigative reports:

c) Organize the report in an orderly, logical manner to quickly identify the issues and evidence

- Write in short, simple, direct sentences and paragraphs
- Reports should be no longer than necessary without sacrificing clarity, completeness and

accuracy to communicate the relevant  
investigative findings

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- Reports must not raise unanswered questions nor leave matters open to misrepresentation
- Each report must contain an accurate recitation of facts
- Information obtained during an investigation should be verified by as many sources as are necessary and reasonable to establish the validity of such information
- Investigative reports should not contain opinions, hearsay, conclusions, or personal views
- Systemic weaknesses or management problems disclosed in an investigation should be reported to agency officials.

d. Objectivity

The fourth qualitative standard for investigative organizations is: *Individuals conducting investigations must be free from any impairment of objectivity and impartiality.*

Investigations shall be performed in an objective, complete and timely manner. Where appropriate, they shall provide sufficient information to permit responsible authorities to hold individuals accountable for their actions and to correct system deficiencies.

1) Personal Hindrances

a) Every investigator may experience difficulty in remaining objective and impartial due to a myriad of reasons. Official, professional, personal, or financial

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relationships may affect the extent of the investigation, limit disclosure of information, or otherwise compromise the investigation.

b) Pre-conceived opinions or biases that relate directly or indirectly to particular individuals, groups, or organizations also can come into play. Investigators should be sensitive to inherent prejudices that may affect their work, and discuss them with their supervisors before undertaking an investigation.

c) Investigators must also consider appearance issues. For example, if an investigator has a personal

acquaintance with the subject, there may be the appearance of bias even though none actually exists. When there is a reasonable likelihood the integrity of the investigation may be compromised by the real or apparent bias of the investigator, the investigation should be assigned to someone else.

## 2) External Hindrances

a) External factors may impede the ability of an individual to conduct an independent, objective investigation. These may include interference in the assignment of cases or personnel, and restrictions on funds or other resources available for investigation.

b) The authority to overrule or to influence the extent and thoroughness of the investigation and the content of the investigative report or denial of access to sources of information also impact directly on the independence and objectivity of the investigation.

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Investigators faced with such impediments shall report them to management through the chain of command.

**NOTE: Since complete assurance of impartiality and objectivity is necessary, allegations must be investigated by individuals outside and independent of the organizational unit specified in the complaint.**

## e. Completeness

The fifth qualitative standard for investigative organizations is:

*An investigation must be complete and thorough to be closed.*

The Investigative Report and the documentation in the case file must reflect thoroughness and completeness of the investigation.

1) A thorough Investigative Report addresses the following:

- a) All relevant aspects of the investigation
- b) Results of the investigation clearly and concisely
- c) Facts presented in a logical, direct manner
- d) Logically organized
- e) Accurate
- f) Clear
- g) Concise
- h) Makes sense
- i) Does not raise unanswered questions or leave

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matters open to question or misinterpretation

j) No longer than necessary to clearly and accurately communicate the relevant findings

k) System deficiencies or management problems disclosed during the investigation.

2) The investigative report and the case file must reflect the following:

a) All allegations in the basic complaint were addressed

b) Other allegations developed during the investigation were addressed or referred for appropriate follow-up action

c) All key individuals were interviewed by the investigator

d) All relevant questions were asked by the investigator

e) Pertinent documents were created, collected, reviewed, and maintained by the investigator

f) Legal or technical expertise was obtained and documented when appropriate

g) The investigator used common sense in conducting the investigation

h) Accountability actions were taken

i) Conclusions are logical based on the facts presented

j) Recommendations are feasible and appropriate.

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#### f. Timeliness

The sixth qualitative standard for investigative organizations is:

*Investigations are to be initiated, conducted, and completed in a timely manner.*

Management action and follow-up in response to the report must also be timely.

#### g. Accountability

The seventh qualitative standard for investigative organizations is:

*Management has the duty to hold subordinates accountable for their actions and to correct system deficiencies.*

The investigation must provide them with the information necessary to carry out this responsibility effectively.

The following ten steps form the basis for the fraud investigation.

They are discussed in the sections which follow. The Checklist for Investigations found in APPENDIX 3 can be used to record the dates of the various activities associated with the investigation as they are accomplished.

**Note: It is recommended a copy of the Checklist is kept**

### **in the Fraud File.**

- Receive/initiate referral for investigation
- Accept and prioritize referral
- Identify investigative techniques
- Gather, document and analyze evidence

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- Determine intent
- Calculate overpayments
- Calculate Cost Savings
- Interview suspect
- Begin prosecution or Administrative Disqualification Hearing process
- Prepare reports
- Complete post case disposition

#### **1. Receive/Initiate Referral for Investigation**

A written referral form will be completed each time an allegation of fraud is made to the local fraud investigator. In the case of referrals originating in the local agency, the referral will be made using the Fraud/Overpayment Referral form, (See PART XIV, Form #5), or in the case of initial application cases, the Front-End Investigations Referral form (See PART XIV, Form #6, [(Instructions, 6a–6d)]).

Other referrals, such as those made directly to the investigator by the public, reports of an allegation by another local agency, or a state or federal agency, may be made verbally. In those situations, the fraud investigator will generate the referral form.

#### **a. Local Agency Referrals**

##### **1) Initial Application Cases**

It is the local agency's responsibility to refer for investigation cases in initial application status when there is knowledge of questionable situations or allegations of fraud. Prior to

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referral, the program worker will document and verify questionable eligibility factors in accordance with policy.

Once the worker has completed his usual duties in determining the applicant's eligibility, the questionable eligibility factors will be screened against the criteria listed on the back of the Front-End Investigations Referral form. If a case meets any of the criteria, the Front-End Investigations Referral form will be completed and case referred to the

fraud investigator within 24 hours.

The investigation of such a case, if undertaken, is called a Front- End Investigation. Its purpose is to identify and prevent “up-front” erroneous or fraudulent issuance of benefits, to aid in the reduction of errors, and to eliminate or reduce the need for back-end” investigations. The fraud investigator will complete the investigation within seven (7) working days from the date of the referral for cases scheduled for the normal 30 to 45 day processing period. Cases meeting the criteria for expedited services will be investigated within two (2) working days from the date of the referral. If the fraud investigator is unable to complete the investigation within the recommended time frame, the investigator will forward the preliminary findings to the program worker and continue the investigation until completed. §II of the Front-End Investigations Referral form will be used to notify the worker of the outcome, or status, of the investigation.

It is the responsibility of the program worker to take the results of the investigation into consideration in determining the applicant’s eligibility. The program worker is also

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responsible for reporting the case disposition and any savings or cost avoidance resulting from the front-end investigation to the fraud investigator. §III of the Front-End Investigations Referral form is used for this purpose. Referral criteria for front-end fraud investigations are found in APPENDIX 4.

## 2) Approved Cases

Approved cases, whether currently open or closed, must be referred to the fraud investigator when the program worker has reason to believe that fraud has occurred. It is expected that the referral will be made within five (5) working days of identification of the suspected fraud using the Fraud Overpayment Referral form (See PART XIV, Form #5)

### b. DFM Referrals

These complaints are summarized and referred to the appropriate local agency using the DFM Referral form. (See PART XIV, Form #7) The local fraud investigator has 45 calendar days in which to respond on the status of the investigation.

## 2. Accept and Prioritize Referral

It is the responsibility of the fraud investigator to determine if a referral can be accepted for investigation. A referral can be accepted only if a factual

basis exists for the allegation (not suspicion or “gut feeling”) and the investigator can confirm that a specific program policy was violated. For cases referred by the local agency not accepted for investigation, the fraud investigator will return the referral to the appropriate worker with an explanation of the decision not to investigate.

The investigator’s first task after receiving a referral is to determine (or

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confirm) the specific program policy that was violated and to note the actual policy citation(s). The investigator must ensure that the allegation is, in fact, a violation of policy, or that the information not reported actually affected the client’s eligibility for benefits. In making this determination, the investigator will take care to reference the policy that was in effect at the time the alleged fraud was committed. A copy of the specific policy should be added to the Fraud case file.

It is from this initial analysis of the allegation that the fraud investigator decides to accept the case for investigation. The analysis also serves as basis from which the investigation is planned. The investigator’s failure to properly analyze the allegation in order to determine what must be done can lead to wasted effort and erroneous conclusions. The investigator must know what he needs to discover before the investigation can be planned and begun. The potential scope of the allegation must be established before a determination can be made of the information needed to establish the facts and before a method of investigation can be chosen.

#### a. Establishment of the Fraud File

If a case is accepted for investigation, a separate fraud file must be immediately established. The fraud file will contain:

- 1) Fraud referral
- 2) Original documents from program case files pertinent to the investigation (i.e. applications, rights and responsibilities forms, change reports)
- 3) Program payment histories
- 4) Data from Division of Motor Vehicles (DMV), Virginia Employment Commission (VEC), and other on-line systems,

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as appropriate

- 5) Copies should be made of original documents and the copies placed in the program files. The copies will be replaced with the originals once final disposition has been made of the case.

The client will not have access to information contained in the file because it pertains to the investigation of alleged criminal activity. During the investigation, the local agency may withhold information that relates to the status of the investigation from the client. The investigative file will be kept in a locked file drawer or cabinet when not in use.

b. Entry of Case into Fraud Database Tracking System

At the same time that the fraud file is established, the case will be entered into the Fraud Database Tracking System as a pending investigation.

c. Timeframes/Prioritization of the Referral

Once a referral is accepted for investigation, an investigative priority will be established. The priority given a particular referral will take into consideration the following factors. Investigations should be scheduled for completion within 90 days, unless a shorter timeframe is necessitated by the status of the case. Prioritization should include analysis of the following factors:

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1) Current status of the case: pending or approved, open or closed

2) Previous fraud findings (court or ADH), or previous fraud referral(s)

3) Duration of the alleged fraud. (A fraudulent situation that has gone on for a longer period of time may merit a high priority)

4) Estimated amount of benefits fraudulently received. (A high priority generally would be assigned to a case involving a large amount of benefits)

5) Age of the case. (The "age of the case" usually refers to the length of time between when the fraud began and the time the case was referred for investigation. It may also be used to describe the time that has elapsed on a case when the fraud investigation should have been undertaken but for some reason was not.) The fraud investigator may wish to give some priority to such "older" cases, depending upon the case circumstances

6) Source of the information (Quality Assurance, for example).

7) Availability of evidence and/or witnesses. (Have witnesses moved out of the area? Has an agency witness left the agency under less than desirable circumstances?)

8) Current whereabouts of the client. (Is the client out of state? Will extradition be necessary?)

3. Identify Investigative Techniques



for investigation, he must determine which method(s) or technique(s) to use. Techniques are methods by which a desired aim is accomplished. In the case of public assistance fraud, techniques are chosen with the goal of proving or disproving the allegation.

When fraud is suspected, it is the investigator's responsibility to establish proof based upon the grounds for suspicion. Information in an investigation is secured from two primary sources: recorded sources and persons. Records are searched as a means of securing documentary corroboration of verbal information and for unearthing leads. Individuals are consulted for the purpose of getting information about a subject and situation under investigation. This information may direct the investigator to other sources.

**Note: See Part III Investigative Methods, and Part IV Investigation of Common Fraud Offenses for additional information.**

#### 4. Gather, Document and Analyze Evidence

In order to prove if the client did or did not commit fraud, the investigator will have to gather evidence. The investigator must review the client's case records to determine to what extent the evidence needed is already available, and what additional information or evidence is needed from outside sources. This additional information can be requested by telephone, mail, or in person depending on the nature of the investigation and the time frame for completion.

In addition to gathering evidence, the investigator may have to interview witnesses, such as employers, landlords, or bank officials, who may have information pertinent to the investigation. In some situations, the investigator may find it necessary to interview the client during the course of the investigation.

**Note: See PART V, Rules of Evidence for more specific information**

The investigation of each case will follow the same general procedures with steps carried out in the order outlined.

##### a. Review of All Program Case Records

An initial fraud referral may reference suspected fraud in one program area only. It is possible, however, that the client may have committed fraud in other programs as well. The investigator's first task in investigating the case will therefore be to identify all of the

benefits and services received by the client during the period of the alleged fraud.

Once the benefits and services received during the period in question are identified, it will be the responsibility of the fraud investigator to read the case record for each program identified. These case readings will serve several critical purposes.

First, the readings will establish that the information allegedly not reported (and which prompted the initial referral for the fraud investigation), was not, in fact, known to some other agency employee. If the information in question was known, no fraud has occurred and the investigation ends at this point.

Secondly, the readings may establish that the evidence needed to substantiate the allegation of fraud is already available, or may point the way to additional information or evidence needed from outside sources. Even if there is no evidence in the records that the information was known, other information pertinent to the investigation may be discovered.

Finally, the case review will provide the fraud investigator with Virginia Department of

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general background about the client including the client's reporting history.

The investigator may independently review all service case records with the exception of Child Protective Services (CPS) and Adult Protective Services (APS) files. If there was an open CPS or APS case during the period of the alleged fraud, the investigator will consult with the appropriate CPS or APS worker and have that worker review the file for information that might be of importance to the fraud investigation.

#### b. Interviews with Program Workers

After reading through all the appropriate case records, the investigator will interview each of the workers, including service workers, currently employed by the local agency who handled any of the client's cases that were active during the period of the alleged fraud. The purpose of these interviews is to determine:

- 1) If the worker was aware of the alleged circumstance but failed to note this in the case record
- 2) The worker's procedure for explaining reporting responsibilities to the client
- 3) Whether the worker can physically identify the client

The results of these interviews will be noted in the fraud file. If it is determined that a worker was aware of the information alleged to have not been reported, the fraud investigation will end. Also, if the fraud investigator determines that a worker's explanation to a client

concerning reporting responsibilities was inadequate or incorrect, consideration may be given to discontinuing the fraud investigation. Problems such as the worker's inability to physically identify the

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client will not affect the fraud investigation but may effect how the case is handled should it be referred for prosecution.

If a worker is no longer employed by the local agency, the investigator should make an attempt to locate the worker and conduct an interview, especially if the worker may be a key witness. If the former worker is a crucial witness and cannot be located, or left the agency under less than ideal circumstances, this information should be noted in the fraud file.

#### c. Review of Other Information, Including On-Line Data

Depending on the nature of the investigation, the investigator will check the on-line systems available to the agency (MSI, DMV, VEC, etc.) for information on the client. (See APPENDIX 5, On-Line Systems, for a list of on-line systems and access information). Agencies with access to STARS, the State Tax Department's online system, will also check that system. Agencies without access to STARS can request the DFM to access the system and provide any pertinent information to the local agency. The local agency must abide by the security rules and regulations governing the systems accessed.

With regard to information needed from DMV, local agency fraud units are classified, under §63.2-526 (Code of Virginia), as a criminal justice agency for the sole purpose of obtaining motor vehicle licensing and registration information from entities within and without the Commonwealth. Fraud Investigators needing such information from Departments of Motor Vehicles in other states should request it from their local law enforcement agency. When making the request, it may be necessary to cite the provision in §63.2-526 pertaining to local Departments of Social Services'

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authority to obtain the information.

The investigator will also utilize any resources available locally that might prove beneficial to the investigation, such as school records, real estate and personal property tax records.

#### d. Interviews with Other Sources

It may be necessary for the fraud investigator to interview nonagency personnel about the alleged fraud. Persons who have

information pertinent to the investigation may include employers, landlords, or bank officials. In some situations, the investigator may find it necessary to interview the client during the investigation.

#### 5. Determine Intent

Based on the results of the investigation, the fraud investigator will determine if the client, or person acting on the client's behalf, actually intended to commit fraud, and if the evidence is sufficient to substantiate that intent. Unless intent can be established, fraud cannot be said to have occurred.

The investigator must consider four issues when deciding if intent exists:

- a. Was the act (providing false information, withholding information, or failure to timely report information) deliberate or willful? Was it committed with knowledge of its falsity?
- b. Did the client have knowledge of the correct information?
- c. What was the client told regarding his reporting responsibilities?
- d. What would the impact on the client's eligibility have been if the change had been reported?

Intent cannot always be easily established. The investigator will want to

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consider such factors as the client's age, education, and mental capacity in attempting to determine intent. An interview with the client may be necessary before a decision can be reached. Additional information about intent, and examples of typical issues encountered in establishing intent is contained in PART VI INTENT.

#### 6. Calculate Overpayments

Once the investigator has gathered the evidence to substantiate that fraud has occurred, the amount of benefits fraudulently obtained must be determined.

There should be sufficient information available to establish the time period covered by the alleged fraudulent behavior. Specific program policy determines the starting dates of overpayments in all benefit categories and the date of confirmation of the suspected information ends the period of fraud.

Calculation of overpayments is based on benefit program and service program policy and procedures in effect at the time the overpayment occurred, unless specifically noted otherwise in policy. Assistance program policy manuals, as appropriate, must be used in determining the amount of any overpayment.

It is useful to have the overpayment calculated prior to the interview with the suspect, especially if a repayment agreement is part of the interview format.

#### 7. Calculate Cost Savings

Cost savings is a loss prevented rather than incurred. These primarily

occur at initial application. This is front end cost savings.

On going case cost savings is calculated by multiplying the monthly

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benefit by the number of remaining months in the certification period.

**Note: Once the new Fraud Database Tracking System**

**[FDTS] is up statewide, it will calculate Front End**

**cost savings for you**

#### 8. Interview Suspect

Once the investigator has gathered the evidence and determined that intent is substantiated by the evidence, the next step is generally the interview of the individual suspected of committing the fraud. Usually this is the client, but in some situations, there may have been an accomplice or another individual involved, such as a spouse or boyfriend.

How this interview is undertaken, and whether, in fact, it is undertaken at all, depends on whether the fraud will be handled through the Administrative Disqualification Hearing (ADH) process, or whether the case will be referred for prosecution. The choice between these options depends on the agreement the local agency has with the Commonwealth's Attorney (CA) regarding the types of cases accepted for prosecution. If the case fits the criteria in the agreement for referral to the Commonwealth's Attorney, the fraud investigator's interview with the suspect, which generally precedes the referral for prosecution, must be conducted within the specific CA's guidelines. Some CA's do not want the suspect to be interviewed at all or prefer that law enforcement personnel conduct the interview. Some prosecutors approve of the fraud investigator interviewing the suspect prior to referral for prosecution, but want the investigator to read the suspect the Miranda Rights.

If the case will not be referred for prosecution but will be handled through the ADH process instead, the investigator must attempt to interview the client. The responsibility to interview the client cannot be met by simply mailing the client the Administrative Disqualification forms.

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Whether the interview is conducted in conjunction with a referral for prosecution or prior to beginning the ADH process, the desired outcome is the same: an admission of guilt or, an acceptable explanation of the questionable situation.

**Note: See PART VII Interviews and Interrogations, and**

**PART VIII, Administrative Disqualification Hearing**

**Process for more specific information.**

#### 9. Begin Prosecution or Administrative Disqualification Hearing

If fraud has been substantiated by evidence, the agency cannot simply begin collection of any overpaid benefits. The agency must either refer the case for prosecution or begin the ADH process.

In order for the local agency to determine if the case should be prosecuted or handled administratively, the local agency must have entered into an agreement with its Commonwealth's Attorney (CA) regarding the types of cases that the CA will accept for prosecution. While the agreement itself does not have to be in writing, the agency should keep on file a written summary of the agreement. The CA has sole discretion as to which cases will or will not be accepted for prosecution. The agency will decide whether to prosecute the case or begin the ADH process based on this agreement.

For example, some CA's may only accept felony cases. Therefore, if an investigation determined that an overpayment of less than \$200.00 occurred, the agency would know that the case would not meet the CA's criteria and the case would be handled through the ADH process. In another example, the CA may not accept a case in which case no overpayment of benefits occurred. This type of case would then be handled administratively.

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If a determination has been made by the investigator to refer the case for prosecution, the investigator is responsible for preparing a report which

- a. Details the results of the investigation
- b. Summarizes all of the relevant facts
- c. Presents a determination of findings

The investigator must consult with the CA to determine the appropriate report format. If the CA does not require a specific format, the investigator must use the Investigative Report of Fraud (See PART XIV, Form #8 – 8d) If the case will not be referred for prosecution and the Administrative Disqualification Hearing process is started, the investigator must use the required ADH forms:

- a. Notice of Intentional Program Violation (PART XIV, Form #9)
- b. Waiver of Administrative Disqualification Hearing (PART XIV, Form #10)
- c. Referral for Administrative Disqualification Hearing (PART XIV, Form #11)
- d. Each of these forms can be accessed from the Local Agency DSS Intranet.

**Note: See PART VIII, Administrative Disqualification Hearings Process, and PART IX Judicial Process, for more specific information. APPENDIX 6, Guidelines for Local Agency Discussion with Commonwealth's Attorney, provides guidance for**

## **local agency use in setting up an agreement with the Commonwealth's Attorney**

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### **10. Prepare Reports**

#### **a. Summary Report**

After a case has been disposed of through either the judicial or the administrative process, the investigator must enter the results of the investigation into the Fraud Database Tracking System. A hard copy of the summary report must be placed in each of the individual's case records. The report will serve as notification to the program worker(s) that the investigation is now complete. A report must be provided regardless of whether the current status of the assistance case is open or closed. In some local agencies, the investigator may have to prepare additional reports for the agency director or the local Board of Social Services.

#### **b. Statistical Report**

Each month, the investigator must complete a statistical report in the Fraud Database Tracking System (FDTS). This statistical report is a record of the agency's investigative activity for that month.

The FDTS is available to agencies through the Internet. Data for the report must be entered on-line no later than the fifth (5th) working day of the month following the month of activity.

Food Stamp statistical information is compiled by the DFM and reported, as required, to the United States Department of Agriculture. Information on other programs is maintained by the State and disseminated as requested.

### **11. Complete Post Case Disposition**

After the investigation has been completed and the fraud case has been

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disposed of through the judicial system or administratively, the investigator must ensure that any original documents removed from the program case record during the investigation are re-filed as appropriate.

In addition, the investigator must ensure that the findings are substantiated in the investigative file. The investigator also must ensure that the appropriate program worker(s) is notified of any disqualification penalties that should be imposed.

### **Note: See APPENDIX 7, Checklist to Close Out Case Investigation**

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## **APPENDIX 1**

### **CITIZEN AND ANONYMOUS REFERRALS**

Referrals are frequently received from private citizens or anonymous callers when they know something about a client who they believe has not been truthfully reported. They may also believe that the details they are reporting are relevant and appropriate. It is important for the investigator to understand that citizen complaints may often be irrelevant because the public is not knowledgeable about public assistance regulations. Even so, the complaint should be taken with respect toward the complainant and as much information gathered as possible relating to the complaint. Such citizen complaints have been known to lead to the discovery of actual overpayments and fraud.

#### **1. Gather Information**

The investigator should gather as much information from the caller as possible regarding the complaint. This is especially true in the case of anonymous calls. There may never be another opportunity to speak with the caller again. Therefore, the investigator will want to get the following:

- a. Name
- b. Address
- c. Relationships of other household members
- d. Employer name and address if the complaint is about unreported income
- e. Any known household resources
- f. Any other relevant information about the complaint.

If the complaint is about unreported household members, it is a good idea to obtain the time of day the person is actually in the home.

#### **2. Determine Source and Relationship**

The investigator should always ask the complainant how he got the information he is reporting in the first place. Determine if the caller obtained this information firsthand, if he has seen or heard something with his own eyes or ears, or if the information was obtained from someone else. A second-hand report will be less reliable because the information may have been misinterpreted passing from one person to another. It is also helpful to determine the relationship of the caller to the client such as a family member, neighbor, a co-worker, or an ex-spouse, or former relative. This can assist the investigator in determining if the complaint is a result of a grudge against the client and false or misleading information may be reported to get the client in trouble. In short, gather as much



information as possible that will tell you where to go and who to talk to in order to verify the complaint.

### 3. Concerned Citizen Information

The investigator may want to ask the name and address of the caller in case further contact may be necessary in the future, but should not press the issue. Respect the wishes of the caller to remain anonymous if they wish. A concerned citizen is an important source of information and he should feel confident that he would remain anonymous.

### 4. Confidentiality of the Complainant and Client

There is one thing the investigator must remember. It is vital that the client's confidentiality remains intact. You may not confirm to a complainant that the alleged client is in fact a client. You must not give any information about the client to anyone during the course of an investigation unless necessary to establish eligibility criteria. It may be necessary to explain to the complainant that laws prohibit you from keeping him informed about the status of the investigation.

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Appendix 2

## **APPENDIX 2**

USDA Food and Nutrition Service Field Offices, Virginia Counties and Cities Served

### 1. RICHMOND FIELD OFFICE (637)

Officer-In-Charge Phone: 804-287-1710

Food and Consumer Service, USDA Fax: 804-287-1726

1606 Santa Rosa Road, Suite 129 e-mail:katrina.ward@fns.usda.gov

Richmond, Virginia 23229

Counties of Accomack, Albemarle, Amelia, Amherst, Appomattox, Augusta, Bedford,

Brunswick, Buckingham, Campbell, Caroline, Charles City, Charlotte, Chesterfield,

Cumberland, Dinwiddie, Essex, Fluvanna, Gloucester, Goochland, Greensville, Halifax,

Hanover, Henrico, Isle of Wight, James City, King & Queen, King William, Lancaster, Louisa,

Lunenburg, Mathews, Mecklenburg, Middlesex, Nelson, New Kent, Northampton, Nottoway,

Pittsylvania, Powhatan, Prince Edward, Prince George, Richmond, Southampton, Surry,

Sussex, York. Cities of Charlottesville, Chesapeake, Colonial Heights, Danville, Emporia,

Franklin, Hampton, Hopewell, Lynchburg, Newport News, Norfolk, Petersburg, Portsmouth,

Richmond, Staunton, Suffolk, Virginia Beach, Waynesboro, Williamsburg.

**2. TOWSON, MARYLAND FIELD OFFICE (614)**

Officer-In Charge Phone: 410-962-2390

Food and Consumer Service, USDA Fax: 410-962-2401

515 East Joppa Road, Suite 208 e-mail: joseph.devereaux@fns.usda.gov

Towson, Maryland 21286-5418

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Counties of Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Greene, King George,

Loudoun, Madison, Northumberland, Orange, Page, Prince William,

Rappahannock,

Rockingham, Shenandoah, Spotsylvania, Stafford, Warren, Westmoreland. Cities of

Alexandria, Falls Church, Fairfax, Fredericksburg, Harrisonburg, Manassas Park, Manassas

Park City, Winchester.

**3. CHARLESTON, WEST VIRGINIA FIELD OFFICE (626)**

Acting Officer-In-Charge Phone: 304-347-5944

Or Program Specialist Fax: 304-347-5559

Food and Consumer Services, USDA e-mail: katrina.ward@fns.usda.gov

One Valley Drive, 300 Summers Street, Suite 960 e-mail:

karen.coleman@fns.usda.gov

Charleston, West Virginia 25301-1617

Counties of Allegheny, Bath, Bland, Botetourt, Buchanan, Carroll, Craig,

Dickenson, Floyd,

Franklin, Giles Grayson, Henry, Highland, Lee Montgomery, Patrick, Pulaski,

Roanoke,

Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe. Cities of Bristol,

Buena Vista, Clifton Forge, Covington, Galax, Lexington, Martinsville, Norton,

Radford,

Roanoke.

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Appendix 3

**APPENDIX 3**

## CHECKLIST FOR INVESTIGATIONS

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

Referral Date: \_\_\_\_\_

=====

=====

### ACTIVITY DATE COMPLETED

1. Referral received and entered into tracking system \_\_\_\_\_
2. Case record review completed \_\_\_\_\_
3. Request for verifications sent \_\_\_\_\_
4. Needed verifications received \_\_\_\_\_
5. Request for copies of TANF checks sent \_\_\_\_\_
6. Request for Medicaid expenditures sent \_\_\_\_\_
7. Copies of TANF checks received \_\_\_\_\_
8. Medicaid expenditures received \_\_\_\_\_
9. Calculation of OP/OI or Cost Savings complete \_\_\_\_\_
10. Interview scheduled \_\_\_\_\_
11. Individual did/did not appear for Interview/Interrogation \_\_\_\_\_
12. Fraud determined/not determined \_\_\_\_\_
13. Supervisory review \_\_\_\_\_
14. Refer to CA \_\_\_\_\_
  - a. Case sent to CA \_\_\_\_\_
  - b. Prosecute, Yes/No \_\_\_\_\_
  - c. Warrant sworn out \_\_\_\_\_
  - d. Direct indictment \_\_\_\_\_
  - e. Preliminary Hearing held \_\_\_\_\_
  - f. Grand Jury \_\_\_\_\_
  - g. Circuit Court trial held \_\_\_\_\_
  - h. Sentencing hearing held \_\_\_\_\_
15. Begin ADH process \_\_\_\_\_
  - a. Notice of IPV and Waiver sent to individual \_\_\_\_\_
  - b. Waiver received, Yes/No \_\_\_\_\_
  - c. Copy of ADH waiver sent to Chief Hearing Officer \_\_\_\_\_
  - d. Case referred to ADH \_\_\_\_\_
  - e. Investigative results entered into on-line tracking System \_\_\_\_\_
  - f. Claim established in ADAPT and/or FSCTS \_\_\_\_\_
  - g. Demand letter for repayment sent \_\_\_\_\_
  - h. Notice of Disqualification sent to individual(s) \_\_\_\_\_
  - i. DRR sent to DFM or entered into the eDRS \_\_\_\_\_

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## **APPENDIX 4**

### **REFERRAL CRITERIA FOR FRONT-END INVESTIGATIONS**

For all applications, the Eligibility Worker must attempt to document and verify questionable eligibility factors in accordance with policy defining their duties and responsibilities. For example, if the applicant reports a move from another state, the Eligibility Worker should verify with the other state that the applicant does not have any active cases. In addition, the usual inquiries must be made into the DMV and VEC systems and other systems, as appropriate, and placed in the file. If the Eligibility Worker has performed their usual duties in determining the applicant's eligibility and any of the following possible questionable circumstances are still present, the Worker should refer the case to the local agency fraud unit for review.

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#### **1. Identity**

- a. Applicant presents identification document, which appears to have been altered and/or does not appear authentic
- b. Other

#### **2. Residency**

- a. Applicant presents verification of residency, such as a rent receipt, lease, utility bill that appears to have been altered and/or written by the applicant
- b. Applicant is the primary tenant of the residence with no residency verification, such as lease, utility bill in their name
- c. Applicant has a history of frequent moves without a reasonable explanation
- d. Applicant reports mailing address as Post Office Box with no reasonable explanation
- e. Applicant has separate living and mailing addresses with no reasonable explanation
- f. Applicant is unsure of address
- g. Other

#### **3. Household Composition**

- a. Application indicates that a previous income producer is no longer in the household
- b. Application indicates that a person previously employed, and not previously included in the Food Stamp household, is now requesting food stamps and is unemployed

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- c. Application indicates a drastic increase in household size from previous applications
- d. Applicant provides inconsistent information regarding social security numbers, date of birth and relationships of household members
- e. Conflicting information received, such as school or physician records, indicating that a child(ren) has separate living arrangements
- f. Conflicting information received such as from landlord, regarding household composition
- g. Other

#### 4. Resources

- a. Applicant reports household including wage earner(s) but no reported vehicles
- b. Applicant reports wages but no bank accounts
- c. Applicant reports savings account(s) for children, but none for adults
- d. Other

#### 5. Earned Income

- a. Application indicates paid fixed expenses, such as rent or mortgage, is equal to or exceeds income with no reasonable explanation
- b. Applicant presents earnings verification that does not appear to be authentic, appears to have been altered and/or completed by the applicant

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- c. Reported or verified earnings do not appear to be consistent with wages reported to Virginia Employment Commission (VEC)
- d. Applicant reports a self-employed wage earner but has little or no business records to verify income
- e. Applicant reports wage earner that works “under the table” or “off the books”
- f. Application includes a household member with a history of employment not reflected in VEC, such as babysitting or domestic work, is currently unemployed and not receiving unemployment compensation
- g. Application includes a currently unemployed principal wage earner with a long history of employment, with no current unemployment compensation benefits
- h. Applicant claims to be unemployed but shows evidence of working,

e.g., uniform, odors, or paint stains on clothing

i. Other

6. Unearned Income

a. Application includes unemployed principal wage earner that is not receiving unemployment compensation benefits

b. Applicant reports household member(s) attending institution of higher learning with no reported scholarships, grants, or student loans

c. Applicant reports no source of income other than loans from

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family/friends

d. Application indicates paid fixed expenses such as rent or mortgage equal to or exceeding income with no reasonable explanation

e. Other

7. Prior History

a. Applicant has prior history of denial, and closure resulting from a previous investigation

b. Applicant has a history of questionable information

c. Other

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Appendix 5

**APPENDIX 5**

**ON-LINE SYSTEMS**

MULTIPLE SYSTEMS INQUIRY (MSI)

ADAPT Application Benefit Delivery Automation System

VACIS Virginia Client Information System

MMIS Medicaid Management Information System

FUEL Fuel Program

SDX State Data Exchange

DCSE - APECS Division of Child Support Enforcement

**OTHERS**

DMV Department of Motor Vehicles

VEC Virginia Employment Commission

SVES State Verification Exchange System (Including the Prisoner Verification System)

DRS Disqualified Recipient Subsystem

FSCTS Food Stamp Claims Tracking System

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Appendix 6

## **APPENDIX 6**

### **GUIDELINES FOR LOCAL AGENCY DISCUSSION WITH COMMONWEALTH'S ATTORNEY (CA)**

1. What are criteria for accepting a case for prosecution?
2. What format is used for the report of investigation or is one required?  
(some CA's choose to meet with the investigator to discuss the case)
3. Should the investigator interview the suspect(s) prior to referral for  
prosecution? If so,
  - a. Should the investigator read Miranda?
  - b. Should the investigator discuss restitution and/or request  
repayment prior to court?
4. Will the individual be charged by warrant or direct Indictment?
5. What procedures should the investigator follow after the suspect is  
arrested?
  - a. Discuss case with defense attorney?
  - b. Interview or have contact with suspect?

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Appendix 7

## **APPENDIX 7**

### **CHECKLIST TO CLOSE OUT CASE INVESTIGATION**

- \_\_\_\_\_ 1. Report results of investigation to on-line tracking system.
- \_\_\_\_\_ 2. For court cases, request return of evidence.
  - \_\_\_\_\_ a. Check against evidence on court report.
  - \_\_\_\_\_ b. Send thank you letters to witnesses.
- \_\_\_\_\_ 3. For all cases, return original documents to case file(s).

=====

### **FOOD STAMP FRAUD**

- \_\_\_\_\_ a. Update claim in Food Stamp claims tracking system and  
ADAPT, as appropriate, from household error to fraud; notify  
local finance/ accounting department if necessary
- \_\_\_\_\_ b. Send fraud demand letter, if appropriate
- \_\_\_\_\_ c. Send copy of disqualified recipient report to DFM
- \_\_\_\_\_ d. If allotment reduction is to be initiated, notify program worker
- \_\_\_\_\_ e. Send individual Notice of Disqualification; notify program worker

### **TANF FRAUD**

- \_\_\_\_\_ a. Establish overpayment/update in ADAPT; notify local finance /  
accounting department; post in LASER
- \_\_\_\_\_ b. Send individual Notice of Disqualification; notify program worker

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\_\_\_\_\_ c. If recoupment is to be initiated, notify program worker

\_\_\_\_\_ **MEDICAID FRAUD**

\_\_\_\_\_ a. Send individual Notice of Disqualification; notify program worker

\_\_\_\_\_ b. Notify DMAS of conviction and repayment status; notify local  
finance/accounting department.

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Appendix 8

**Appendix 8**

**Printable report on the following pages**

**COMMONWEALTH OF VIRGINIA**

**VIRGINIA DEPARTMENT OF SOCIAL SERVICES**

**OFFICE OF AUDIT SERVICES**

**DIVISION OF FRAUD MANAGEMENT**

**INVESTIGATIVE REPORT CONCERNING**

**DIVISION OF FRAUD MANAGEMENT**

**OFFICE OF AUDIT SERVICES**

**VIRGINIA DEPARTMENT OF SOCIAL SERVICES**

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

**CASE DATA FORM**

Case Number:

Case Name:

Social Security Number:

Date of Birth:

Address: Phone Numbers:

Priority Assigned to Case:

Investigator Assigned to Case:

Offense:

Period of Offense:

**INVESTIGATIVE REPORT**

**DIVISION OF FRAUD MANAGEMENT**

**OFFICE OF AUDIT SERVICES**

**VIRGINIA DEPARTMENT OF SOCIAL SERVICES**

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

**Violation(s):**

**Background:**

**NARRATIVE**

**Date Summary of events**



**DIVISION OF FRAUD MANAGEMENT  
OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

**Date Summary of events**

**Date Summary of events**

**Date Summary of events**

**Date Summary of events**

**EXECUTIVE SUMMARY**

**DIVISION OF FRAUD MANAGEMENT  
OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

**INVESTIGATIVE PLAN**

**Entities and Individuals:**

**DIVISION OF FRAUD MANAGEMENT  
OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

**INVESTIGATIVE PLAN (continued)**

**Allegation(s) List:**

**DIVISION OF FRAUD MANAGEMENT  
OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

**INVESTIGATIVE PLAN (continued)**

**Issues and Resolution:**

**DIVISION OF FRAUD MANAGEMENT  
OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

**Evidence List:**

**INVESTIGATIVE PLAN (continued)**

**Interview Sequence Plan:**

**DIVISION OF FRAUD MANAGEMENT  
OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

**INVESTIGATIVE PLAN (continued)**

**Chronology of Events:**

**DIVISION OF FRAUD MANAGEMENT**

**OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

**Logistical Information:**

**INTERVIEW REPORT**

**DIVISION OF FRAUD MANAGEMENT**

**OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

**WITNESSES AND DOCUMENTS**

Witness: Address:

Phone Numbers:

Area of Testimony:

Witness: Address:

Phone Numbers:

Area of Testimony:

**DIVISION OF FRAUD MANAGEMENT**

**OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

Witness: Address:

Phone Numbers:

Area of Testimony:

**WITNESS AND DOCUMENTS (continued)**

Witness: Address:

Phone Numbers:

Area of Testimony:

Witness: Address:

Phone Numbers:

Area of Testimony:

**DIVISION OF FRAUD MANAGEMENT**

**OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

Witness: Address:

Phone Numbers:

Area of Testimony:

**EVIDENCE RECEIPT LOG**

**Source of Evidence:**

Obtained From: Phone Number:

Address:

**Nature of Evidence**

Complete Description:

**Date Time Name Transferred**

**To**

**Reason for**

**Transfer**

**Signature of**

**Recipient**

**DIVISION OF FRAUD MANAGEMENT**

**OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

Signature of Investigator:

Date:

**COLLECTION/RESTITUTION PLAN**

**DIVISION OF FRAUD MANAGEMENT**

**OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

**PAY AGREEMENT**

**DIVISION OF FRAUD MANAGEMENT**

**OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

**FINDINGS/RECOMMENDATIONS**

**DIVISION OF FRAUD MANAGEMENT**

**OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**

**Case Number: Cross Reference:**

**Investigator:**

**FINDINGS/RECOMMENDATIONS (continued)**

**CERTIFICATE OF DESTRUCTION**

**Source of Evidence:**

**DIVISION OF FRAUD MANAGEMENT**

**OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**  
**Case Number: Cross Reference:**  
**Investigator:**

Obtained From: Phone Number:  
Address:

**Nature of Evidence**  
Complete Description:  
**Date Reason**

**Destroyed**  
**Signature of Individual**  
**Responsible for**  
**Destruction**

**Witness Signature Date**  
**Witnessed**

Signature of Investigator:  
Date:

### **CASE CLOSING REPORT**

I recommend this case be closed as of this date for the following reason(s):

**DIVISION OF FRAUD MANAGEMENT**  
**OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**  
**Case Number: Cross Reference:**  
**Investigator:**

Investigator Signature  
This recommendation is approved/not approved.  
Comments:

Supervisor Signature

### **FORMATTING OF CASE FILE**

Section 1

Left Side Right Side  
Case Data Form Case Closing Report  
Formatting of Case File Form Cover Sheet with Seal

**DIVISION OF FRAUD MANAGEMENT**  
**OFFICE OF AUDIT SERVICES**

VIRGINIA DEPARTMENT OF SOCIAL SERVICES

**Case Name: Date of Report:**  
**Case Number: Cross Reference:**  
**Investigator:**

Investigative Report  
Violations  
Background  
Narrative  
Executive Summary

Section 2

Left Side Right Side  
Investigative Plan Witnesses and Documents

Entities and Individuals Evidence Receipt Log

Allegation List

Issues and Resolutions

Evidence List

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Chronology of Events

Logistical Information

Interview Report

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- 2. FNS Field Offices
- 3. FNS Compliance Branch
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- 5. Virginia Department of Social Services' Fraud Unit
- 6. Local Department of Social Services' (LDSS) Fraud Unit
  - a. Referrals Alleging Client EBT Trafficking
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PART 3 INVESTIGATIVE METHODS	
The type of fraud allegation determines the method of investigation. Generally,	
the	
investigator is able to gather evidence needed to resolve the allegation by	
telephoning or	
writing a source. In some situations, it may be necessary for the investigator to	
actually	
visit the source to gather the information.	
A. VERIFICATION BY MAIL	
Much of the information needed to establish a fraud allegation can be obtained	
by	
mail. To facilitate the investigative process, standardized form letters were	
developed and are provided in the Forms Section on the Fraud web page or in	
the	
Part 14 of the FREE Manual.	
1. Employer Request for Information Letter A Employer	
Request for Information Letter B	
Used to obtain employment information about the person under	

investigation, though similar in content, the difference is the level of detail requested

## 2. Employment Verification Form

Provides a useful format for reporting wage/salary data and should, in most cases, accompany the Employer Request for Information Letter

## 3. School System Contact Letter

Used to elicit attendance and relationship information from a school system

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## 4. Post Office Address Information Request

Used to verify a mail delivery address or to obtain a home address for a post office box holder

## 5. State Income Tax Information Request

Is forwarded to the Department of Taxation; used to obtain wage-related information.

## B. FIELD VISITS

Field investigations are conducted when information is more effectively obtained by

a personal visit rather than by mail or phone. The first consideration in going outside the agency is always personal safety. If an investigator feels a location is not safe, he/she should not go there. If a situation is questionable, but not apparently dangerous, another agency worker or someone from local law enforcement should accompany the investigator. Cellular phones should be available for safety in questionable situations.

### 1. Home Visits

Home visits are most often used to contact the individual under investigation, most commonly to validate household composition.

The investigator is permitted to make an unannounced home visit during a fraud investigation.<sup>1</sup> An unannounced home visit can yield information about

<sup>1</sup>**Clearinghouse 2004-05**

A recent USDA notification entitled, "Policy on Home Visits Conducted by Investigators" created confusion with

regard to fraud investigators conducting unannounced home visits. The notification relates to 7 C.F.R. 273.2(f) (4)

(iii), which limits the use of home visits during the food stamp application process. The notification stated that

"[w]hile Section 273.2(f) does not in fact apply to Food Stamp Program [fraud] investigations; it can be assumed

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a client's whereabouts, living conditions, and household composition. The visit; however, must be conducted in a reasonable manner, preferably in

daylight.

The information sought in such a situation is highly personal, and should be treated with care and sensitivity. If the investigator needs to look in rooms or in closets, the individual's permission must be secured first. If the individual refuses the investigator access or refuses entry to the home altogether, the investigator must leave. The individual can be requested to come to the local office for an interview, if desired. Unless an investigator is accompanied by a law enforcement official in possession of a search warrant, any access to the individual's home is entirely up to the individual.

## 2. Other Visits

There may be occasions when other types of field visits are needed. For example, if the investigator needs to establish household composition, one that no other limitations apply to such investigations." Upon review of the federal code and regulations, only one provision relating to the manner in which fraud investigations are conducted was found. This regulation, 45 C.F.R.

§ 235.110(b), addresses state plan requirements for investigating fraud in various programs under several titles of the Social Security Act. Although this regulation does not relate to food stamp investigations, its language is instructive. The state plan "must provide. ...[f]or methods of investigation of situations which there is a question of fraud, that do not infringe on the legal rights of persons involved and are consistent with the principles recognized as affording due process of law." Furthermore, because this regulation is a requirement in other types of fraud investigations, it would be practical to conduct food stamp fraud investigations in the same manner.

Furthermore, the Department maintains a uniform fraud manual (Virginia Department of Social Services, Fraud Reduction and Elimination Effort Manual) that applies to fraud investigations, regardless of program area. The manual appears to take into account the legal rights of the persons who are the subject of an investigation. In particular, the section that addresses home visits sufficiently meets this requirement by stating that "[u]nless an investigator is accompanied by law enforcement official in possession of a search warrant, any access to the individual's home is entirely up to the individual." Being unaware on any other requirements that restrict fraud investigators in conducting home visits, subject to the restrictions set out in the state plan and the policy manual, fraud investigators can make unannounced home visits in those cases where a home visit is necessary to carry out the investigation.

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method is to interview people in the client's neighborhood.

Another example could involve potentially forged employment verification provided to the agency by the client. While most employment information is easily obtainable by mail, a personal visit to the employer will establish the validity of the employer's signature.

## 3. Surveillance

Surveillance is the secretive and continuous watching of persons, places, vehicles or objects to obtain information concerning the activities and

identities of individuals. Surveillance is used only when necessary to obtain information which cannot be obtained through other investigative methods. Surveillance has limited applications and may not be an efficient or effective use of resources. The investigator should weigh the time and cost involved before utilizing this investigative method. There is also the issue of the investigator's safety. The local Director, in conjunction with the Commonwealth's Attorney (CA), should make the final decision concerning the use of surveillance in fraud investigations conducted by the agency. There are times, however, when surveillance is necessary in developing an investigative lead. For example, in a household composition investigation, the investigator may want to employ surveillance to observe who comes and goes from the home or to record the vehicle tag numbers of individuals coming and going.

**Note: Surveillance, in and of itself, is not sufficient evidence to prove fraud. Seeing a man or woman entering the home one night and leaving the next morning only proves he**

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**or she was in the home on that particular day. Additional information and patterning, is necessary.**

#### 4. Search Warrant

A search warrant is a written order signed by a judge or magistrate based upon an affidavit of probable cause that a crime was committed. The search warrant gives law enforcement officials authority to search for evidence to support the commission of the crime. The search warrant must be very specific as to the items sought. The investigator cannot serve a search warrant, but may accompany law enforcement officials when the search warrant is served.

A search warrant may be used to search a home to gather evidence to prove the client's spouse is living in the home. The issuance of a search warrant is not limited to the search of a home or office. It can also be issued to search bank or employment records. Any decision to use a search warrant is made in conjunction with the CA and with their approval.

#### C. SUBPOENA DUCES TECUM

A *subpoena duces tecum* is a command to produce records. There are two methods for issuing a *subpoena duces tecum*.

##### 1. Court-Issued Subpoena Duces Tecum

A court-issued *subpoena duces tecum* requires initiation of proceedings before the court. It is only used to compel witnesses to appear and/or bring documentary evidence to the trial itself.

The client must be charged with a crime prior to the issuance of a court-

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issued *subpoena duces tecum*. Generally, this type of subpoena is issued by the CA prior to the suspect's court appearance.

## 2. Local Agency Issued Subpoena Duces Tecum

The local agency issued *subpoena duces tecum* is an administrative subpoena. § 63.2-322<sup>2</sup> of the Code of Virginia grants authority to local boards of social services to issue a *subpoena duces tecum*.

Prior to local boards issuing a *subpoena duces tecum* for a case pending criminal prosecution, the investigator should discuss this option with the CA. The *subpoena duces tecum* should only be initiated if the CA is in agreement with this option. The format for issuance should be as directed by the CA (See Forms for a sample *subpoena duces tecum*)

## D. Sources for Additional Information

See APPENDIX 1, Fraud Investigation Sources of Information, for sources that can

be utilized in the investigation. If a client uses a birth certificate as identification to obtain public assistance benefits, it may be necessary to validate the authenticity of

the certificate. From the certificate, identify the birth number and code (see APPENDIX 2 for structure and birth number area codes) and contact the state of birth to obtain validation.

### <sup>2</sup>§ 63.2-322. Conducting hearings, issuing subpoenas, etc

Local boards in the exercise and performance of their functions, duties and powers under the provisions of this

title are authorized to hold and conduct hearings, issue subpoenas requiring the attendance of witnesses and the

production of records, memoranda, papers and other documents, to administer oaths and to take testimony thereunder.

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The Virginia Department of Corrections provides a web-based Inmate Status Information System, which is found at [www.vipnet.org/cgi-bin/vadoc/doc.cgi](http://www.vipnet.org/cgi-bin/vadoc/doc.cgi).<sup>3</sup>

### <sup>3</sup> Inmate Status Information System

Because inmates are sometimes transferred from one facility to another within the system, the inmate locator was

developed to help you locate an inmate who is currently incarcerated in the system. The inmate locator is not

designed to provide complete inmate records nor is it a database of all inmates past and present in our system.

For information pertaining to past criminal history, please contact the Virginia State Police at: [www.VSP.virginia.gov](http://www.VSP.virginia.gov).

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## DESIGN OF THE FULL BIRTH NUMBER

000-00-000000

000

AREA CODE

00

YEAR OF BIRTH

000000

SERIAL REGISTRATION NUMBER

Alabama

101

New Mexico

130

Arizona

102

New York

131

Arkansas

103

North Carolina

132

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**PART IV. INVESTIGATION OF COMMON FRAUD OFFENSES**

The first step in any fraud investigation involves the review of all client case records. If other

information is needed, the following procedures, organized by type of fraud offense, are to be

followed. Prior to beginning any investigation, the fraud investigator must be thoroughly familiar with issues surrounding confidentiality.

**A. CONFIDENTIALITY OF INFORMATION**

It is important to understand the issues surrounding confidentiality in a welfare fraud investigation. The following are cites from the *Code of Virginia* and Volume I of the



Administrative Manual.

**1. Virginia Privacy Act of 1976 (Title 2.1, Chapter 26, *Code of Virginia*)**

This Act is to ensure safeguards for personal privacy by record keeping agencies. Guidelines are established for the retention and dissemination of personal information:

- (a) Information should not be collected unless the need has been clearly established.
- (b) Information must be appropriate and relevant to the purpose for which it is collected.
- (c) Information must be accurate and current.
- (d) Individuals must know the purpose for which information is recorded and particulars about its use and dissemination.
- (e) Individuals must be able to correct inaccurate materials. There should be a clearly prescribed and uncomplicated procedure for material to be corrected, amended or erased
- (f) Precautions must be taken to prevent misuse of information.

**Virginia Freedom of Information Act (Title 21.-340, Chapter 21, *Code of Virginia*)**

This Act provides for establishing a procedure when a citizen requests inspection of records. An Attorney General opinion states this Act does not apply to records maintained by local welfare/social service agencies (official opinion of May 30, 1973). These records remain confidential.

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**3. Virginia Law (§63.1-53 *Code of Virginia*)**

Virginia law provides that all records and statistical registries of the State Department of Social Services and the local boards and other information which records, registries and information pertain to assistance and services provided any individual shall be confidential and shall not be disclosed except to persons explicitly authorized by statute and to persons having a legitimate interest in the information contained in the welfare records.

(Note: Where there is a question concerning the release of information contained in an active fraud file, the local commonwealth's attorney should be consulted for guidance to avoid compromising the investigation.)

**Intra-Department Disclosures, Volume I, Administrative Manual**

In the course of a client welfare fraud investigation, the Protective Service Worker, upon request, will cooperate with the Fraud investigator to determine if information contained in the Protective Service file is relevant to the fraud investigation.

Such cooperation shall require a meeting between the Protective Service Worker and the Fraud Investigator. The Fraud Investigator will explain the specific information that is needed to prove the allegation of fraud. The Protective Service Worker will then search the file to determine if the information is present. If so, the information will be shared with the Fraud investigator. Sharing of other Social Service files with the Fraud Investigator in the course of a

fraud investigation is permissible.

## **B. UNREPORTED EARNED INCOME**

The first contact to be made to verify unreported earned income should be with the employer.

### **1. Employer Contact - Client**

Depending on the situation, the investigator may request verification or evidence in

writing, or a field visit can be made to the employer. The investigator should request the following information about the employee.

(a) Name, social security number and address used during employment.

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(b) Marital status and dependents (from medical insurance).

(c) Beginning date of employment.

(d) Date first pay received.

(e) Record of all payments received, gross and net. Include bonuses, overtime, sick and accident pay.

(f) Name and address of individual who has custody of the payroll records.

(g) Location of payroll records.

(h) Name and address of individual who can physically identify the client as an employee.

### **2. Employer Contact - Non-Client**

If the person employed for whom information is requested is NOT the client, for example a husband, daughter, or sister, the following evidence may be necessary in order to prove the client had knowledge of the individual's employment:

(a) Client picked up employee's paycheck.

(b) Employee's paycheck was deposited into client's bank account and/or client co-endorsed the paycheck.

(c) Client visited the employee at the work site, or attended with the employee any job related social function.

(d) Client transported employee to or from work.

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(e) Employee drives a company vehicle home.

(f) Employee wears a uniform.

For both client and non-client cases, the earnings information provided by the employer should be compared to those reported to the Virginia Employment Commission (VEC) and any major discrepancies resolved.

If the case is prosecuted, the employer will, in most instances, be subpoenaed to testify.

A written verification from the employer is usually not admissible by itself as evidence in court but can be used as evidence for an ADH.

## **C. UNREPORTED UNEARNED INCOME**

### **1. Unemployment Compensation (UC )**

A history of a client's unemployment benefits can be obtained by accessing the Virginia Employment Commission's (VEC) on-line system. For court purposes, certified copies of the unemployment compensation checks must be obtained. These certified copies of checks can be admitted as evidence without subpoenaing a representative from the VEC to testify. For an ADH, the on-line payment history from the VEC system can be used to show that benefits were issued to the client.

## **2. Social Security Benefits (SSA) and Supplemental Security Income (SSI)**

Verification of Social Security (SSA) and Supplemental Security Income (SSI) benefits can be obtained from the State Verification Exchange System (SVES). Requests for verification are data entered on-line during the day (Monday - Friday) and batch processed to the Social Security Administration (SSA) that night. Responses are returned from Social Security Administration (SSA) that same night and are available the next day for on-line viewing.

If the case will be referred for prosecution, the investigator should obtain a Certified Extract of Benefit Payments and/or certified copies of the benefit checks from the appropriate SSA Program Service Center. [See APPENDIX 1, Social Security/SSI Addresses and PART XIV, Form #21 (a-i) Request for Extracts of Title II (SSA) and Title XVI (SSI) Benefit Payments]. These forms do not contain a space to request certified copies of SSA or SSI paper checks; therefore, should

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the Commonwealth's Attorney require certified check copies, the request should be made on agency letterhead and stapled to the SSA or SSI Request for Extract form.

## **3. Veterans Benefits (VA)**

Verification should be obtained from the Veterans Affairs main office located in Roanoke, Virginia. See PART XIV, Form #22, Request for VA Information.

Some local agencies may have developed a working relationship with their local VA office and may be able to obtain verification from that office. No matter how the verification is obtained, it should be in writing.

## **4. Child Support**

Child support information can be obtained from the Automated Project for the Enforcement of Child Support (APECS) system of the Division of Child Support Enforcement. APECS is available to local agencies through the Multiple Systems Inquiry (MSI).

## **5. Military Allotments**

Verification of military allotments can be obtained by writing to the appropriate military installation.

## **6. Worker's Compensation Benefits**

Information regarding payments made as a result of a job-related accident can be obtained by writing to:

Virginia Worker's Compensation Commission

1000 DMV Drive

Richmond, Virginia 23220

Toll free: 1-888-664-2566 or Local: 804-367-8600

Web site address: [www.vwc.state.va.us](http://www.vwc.state.va.us)

#### **D. SIMULTANEOUS RECEIPT OF BENEFITS IN MORE THAN ONE LOCALITY**

Both the TANF and Food Stamp programs impose severe penalties. In the Food Stamp program there is a ten (10) year disqualification penalty on individuals who have committed fraud through misrepresentation of identity or residence. There is a ten (10)

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year disqualification penalty imposed by the TANF program on individuals who have committed fraud through misrepresentation of residence. (See PART X, Disqualification). In order to determine if an individual misrepresented either his identity or residence in order to receive benefits simultaneously in more than one locality or state, the investigator must contact the state or locality from which the client allegedly moved to verify the time period during which the client received public assistance.

Simultaneous receipt of assistance or failure to report a move from one state to another does not necessarily involve misrepresentation of identity or residence. It is the investigator's responsibility to determine if the client actually misrepresented his identity or residence to obtain the extra benefits.

For example, if a client moved from North Carolina to Virginia and correctly reported his identity and residence on his application in Virginia, but failed to report his move to the State of North Carolina, his action would not constitute fraud under that part of the simultaneous receipt of benefits rule requiring the maximum ten (10) year disqualification. The client did not misrepresent his identity or residence in order to receive benefits in Virginia. (The client may be guilty of fraud in North Carolina for accepting benefits to which he was not entitled once he moved to Virginia. He would not, however, be subject to the ten (10) year disqualification if found guilty since there was no misrepresentation of identity or residence).

If the client had reported an address in Virginia, but verification showed he actually was living in North Carolina, misrepresentation of residence would exist and the client would be subject to the ten (10) year penalty.

#### **E. MISREPRESENTATION OF HOUSEHOLD COMPOSITION**

##### **1. Child(ren) Not Living in the Home**

The type and amount of evidence needed to prove that a child reported to be living in the home is not actually living there depends on the age of the child.

##### **(a) School Age Child**

For a school age child, the following information should be obtained from the school the child is currently attending:

(1) Address at which the child is registered

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(2) Name and address of child's parent or guardian

(3) The date the child was withdrawn, and/or the date and name of the new school to which the child's records were transferred if the child was withdrawn from school during the school year or did not return to school at the beginning of the school term

**(b) Pre-School Age Child**

For a pre-school age child, the investigator should determine if the child is attending or was attending a day care center, being cared for by an individual day care provider, or attending Head Start or pre-school. The investigator should obtain the same information as outlined above.

**2. Man-in-the-Home**

In order to correctly investigate these types of situations and to determine the impact of the man's presence in the home on the client's eligibility, the investigator must answer three questions:

**(a)** What is the relationship of the man to the client?

**(b)** What is the relationship of the man to child(ren) in the household?

**(c)** Did the man receive any money from any source, earned or unearned, during the period he was allegedly living in the home? In some situations, the client may have declared the presence of a man in the home but misrepresented his identity or his relationship to the client and/or the client's child(ren).

In most situations of this type, the investigator must gather circumstantial evidence to support the presence of the man in the home. If at all possible, this evidence should be coupled with at least one eyewitness account, such as that provided by a landlord or maintenance personnel or by other persons who have actual knowledge of the man living with the client. Neighbors and relatives, depending on their relationship to or with the client, may not be as reliable, but should be contacted as appropriate.

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**F. NON-RECEIPT OF TANF CHECK**

The local agency must begin an investigation of a client when, subsequent to the report of non-receipt of the individual's TANF check, the local agency receives evidence that indicates the client did receive and cash the check. If local procedure is to refer such cases to law enforcement, the local agency investigation can be handled in conjunction with the police investigation.

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**APPENDIX 1**

**SOCIAL SECURITY (SSA)/**

**SUPPLEMENTAL SECURITY INCOME (SSI)**

**ADDRESSES**

**REQUESTS FOR VERIFICATION OF TITLE XVI BENEFITS (SSI)**

Social Security Administration

Office of Public Inquiries

6401 Security Boulevard

Room 4-C-5 Annex

Baltimore, Maryland 21235-6401

1-800-772-1212 (phone), 7 a.m. – 7 p.m., Monday – Friday

1-800-325-0778 (TTY), 7 a.m. – 7 p.m., Monday – Friday

Web site: [www.ssa.gov](http://www.ssa.gov)

Report fraud: Read “Guidelines for Reporting Fraud, Waste, Abuse and Mismanagement, then,

Call: 1-800-269-0271

Mail: SSA Fraud Hotline

Post Office Box 17768

Baltimore, Maryland 21235

Fax: 410-597-0118

E-mail: [oig.hotline@ssa.gov](mailto:oig.hotline@ssa.gov)

**REQUESTS FOR VERIFICATION OF TITLE II BENEFITS (SOCIAL SECURITY)**

**ATLANTA REGION-** Office Code: F04

(physical) 61 Forsyth Street, South West, Suite 22T64,

Twenty-second Floor, Atlanta, Georgia 30303-8907

404-562-5500, fax 404-562-5508

Web site: [www.ssa.gov/atlanta/oha/index.htm](http://www.ssa.gov/atlanta/oha/index.htm)

Account Number Breakdown:

Atlanta (416-424), Florida (261-167, 589-595), Georgia (252-260),

Kentucky (400-407), Mississippi (425-428, 587-588), North Carolina (232, 237-246),

South Carolina (247-251), and Tennessee (408-415)

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**BOSTON REGION-** Office Code: F01

(physical) Regional Commissioner, JFK Federal Building, Room 1900,

Government Center, Boston, Massachusetts 02203

(mailing) Office of Regional Commissioner, Room 1975,

JFK Federal Building, Boston, Massachusetts 02203

617-565-2870, fax 617-565-2143

Web site: [www.ssa.gov/boston/public.htm](http://www.ssa.gov/boston/public.htm)

Account Number Breakdown:

Connecticut (040-049), Maine (004-007), Massachusetts (010-034),

New Hampshire (001-003), Rhode Island (035-039), and Vermont (008-009)

**CHICAGO REGION-** Office Code: F05

(physical) Regional Commissioner, 600 West Madison Street,

Tenth Floor, Chicago, Illinois 60661

(mailing) Regional Commissioner, 600 West Madison Street, Tenth Floor,

Chicago, Illinois 60661

312-575-4000, fax 312-575-4016

(report fraud) Social Security Administration, Office of Inspector General,

200 West Adams Street, Chicago, Illinois 60606,

email: [chi.oig.investigations@ssa.gov](mailto:chi.oig.investigations@ssa.gov)

Web site: [www.ssa.gov/chicago/chicago2.htm](http://www.ssa.gov/chicago/chicago2.htm)

Account Number Breakdown:

Illinois (318-361), Indiana (303-317), Michigan (362-386), Minnesota (468-477), Ohio (268-302), and Wisconsin (387-399)

**DALLAS REGION-** Office Code: F06

(physical) Regional Commissioner, 1301 Young Street,  
Dallas, Texas 75202

(mailing) MOS, SSA, 1301 Young Street, Suite 130, MOS-1, Room 550,  
Dallas, Texas 75202

214-767-4207, fax 214-767-4259

Web site: [www.ssa.gov/dallas/dalwr.htm](http://www.ssa.gov/dallas/dalwr.htm)

Account Number Breakdown:

Arkansas (429-432), Louisiana (433-439), New Mexico (525, 585, 648-649),  
Oklahoma (440-448) and Texas (449-467, 627-645)

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**DENVER REGION-** Office Code: F08

(physical) Regional Commissioner, 1961 Stout Street, Federal Office  
Building, 8<sup>th</sup> Floor, Denver, Colorado 80294

(mailing) SSA/ORC, 1961 Stout Street, Federal Office Building,  
Room 325, Denver, Colorado 80294

303-844-2388, fax 303-844-6767

Web site: [www.ssa.gov/denver/welcome.htm](http://www.ssa.gov/denver/welcome.htm)

Account Number Breakdown:

Colorado (521-524), Montana (516-517), North Dakota (501-502),  
South Dakota (503-504), Utah (528-529, 646-647) and Wyoming (520)

**KANSAS CITY REGION-** Office Code: F07

(physical) Regional Commissioner, 601 East Twelfth Street,  
Fourth Floor, Room 436 East, Kansas City, Missouri 64106

(mailing) Regional Commissioner, 601 East Twelfth Street, Fourth  
Floor, Room 436 East, Kansas City, Missouri 64106

816-936-5700; fax 816-936-5747 (Public Affairs office)

Web site: [www.ssa.gov/kc/state.htm](http://www.ssa.gov/kc/state.htm)

Account Number Breakdown:

Iowa (478-485), Kansas (509-515), Missouri (486-500), Nebraska (505-508)

**NEW YORK REGION-** Office Code: F02

(physical) RO Automation Center, Room 40-130, 40<sup>th</sup> Floor,  
26 Federal Plaza, New York, 10278

(mailing) NYRO Automation Center, Room 40-130, 40<sup>th</sup> Floor,  
26 Federal Plaza, New York, New York 10278

212-264-1360, fax 212-264-5257

Web site: [www.ssa.gov/ny/WIN/index.htm](http://www.ssa.gov/ny/WIN/index.htm)

Account Number Breakdown:

New Jersey (135-158), New York (050-134), Puerto Rico (580-584, 596-599) and Virgin Islands (580)

**PHILADELPHIA REGION-** Office Code: F03

(physical) Regional Commissioner, Seventh Floor, 300 Spring Garden Street, Philadelphia, Pennsylvania 19123  
(mailing) Post Office Box 8788, Philadelphia, Pennsylvania 19101  
215-597-5157, fax 215-597-1415

Web site: [www.ssa.gov/phila/states/delaware.htm](http://www.ssa.gov/phila/states/delaware.htm)

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Account Number Breakdown:

Delaware (221-222), District of Columbia (577-579),  
Maryland (212-220), Pennsylvania (159-211), Virginia (223-231),  
West Virginia (232-236)

**SAN FRANCISCO-** Office Code: F09

(physical) Office of Regional Commissioner, 1221 Nevin Avenue, Sixth Floor, Richmond, California 94801  
(mailing) Post Office Box 4200, Richmond, California 94804  
510-970-8400, TTY 800-735-2922, fax 510-970-8216

Web site- [WWW.SSA.GOV/SF/INDEX.HTM](http://WWW.SSA.GOV/SF/INDEX.HTM)

Account Number Breakdown:

Arizona (526-527, 600-601), California (545-573, 602-626),  
Hawaii (575-576), Nevada (530), American Samoa (530), Guam (586),  
Saipan (586)

**SEATTLE REGION-** Office Code: F10

(physical) Regional Commissioner, Suite 2900, 701 Fifth Avenue, Seattle, Washington 98104  
(mailing) Regional Commissioner, 701 Fifth Avenue, Suite 2900, Seattle, Washington 98104  
206-615-2104, fax 206-615-2193

Web site- [www.ssa.gov/seattle/index.htm](http://www.ssa.gov/seattle/index.htm)

Account Number Breakdown:

Alaska (574), Idaho (518-519), Oregon (540-544) and  
Washington (531-539)

**OFFICE OF INTERNATIONAL OPERATIONS-** Social Security Administration, Office of International Operations, Post Office Box 17775,  
Baltimore, Maryland 21235-7775  
410-966-5416, tele-fax 410-965-6539

Normal business hours, Eastern U.S. (English only)  
(administers social security programs outside the  
United States and implementation of the benefit  
provisions of international agreements)

Web site- [www.ssa.gov/foreign/index.html](http://www.ssa.gov/foreign/index.html)

Country Breakdown:

Argentina, Australia, Austria, Belgium, Costa Rica, Croatia, Denmark,



Dominican Republic, Finland, France, Germany, Greece, Hong Kong,  
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Ireland, Israel, Italy, Jamaica, Mexico, Netherlands,  
New Zealand, Norway, Philippines, Poland, Portugal, Slovenia, Spain,  
Sweden, Switzerland, United Kingdom, Yemen

**REQUESTS INVOLVING ALL FOREIGN CLAIMS AND DISABILITY CLAIMS  
UNDER AGE 59**

Social Security Administration  
Office of Public Inquiries  
6401 Security Boulevard  
Room 4-C-5 Annex  
Baltimore, Maryland 21235-6401  
1-800-772-1212 (telephone), 7 a.m. – 7 p.m., Monday – Friday  
1-800-325-0778 (TTY), 7 a.m. – 7 p.m., Monday – Friday  
Web site: [www.ssa.gov](http://www.ssa.gov)

**REQUESTS FOR DISABILITY CLAIMS AGE 59 AND OVER**

Refer to applicable Program Service Center according to account number.

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**SOCIAL SECURITY FIELD OFFICES IN VIRGINIA**

**Toll free-1-800-772-1212; TTY 800-325-0788**

**ACCOMAC**

Office Code: B68  
Social Security Administration  
22581 Center Parkway  
Accomac, Virginia 23301  
757-787-7141, fax 757-787-8737  
**ALEXANDRIA** Office Code: 0294

Social Security Administration  
6295 Edsall Road, Suite 190  
Alexandria, Virginia 22312  
703-274-0029, fax 703-274-0131  
**ARLINGTON** Office Code: 0A37

Social Security Administration  
1815 North Fort Myer Drive, Suite 200  
Arlington, Virginia 22209  
703-557-7847, fax 703-979-1438

**BRISTOL** Office Code: 0288

Social Security Administration  
2426 Lee Highway, Suite 200  
Bristol, Virginia 24202  
540-466-2231, fax 540-466-5530

**CHARLOTTESVILLE** Office Code: 0297

Social Security Administration  
Market Street Park Garage  
100 Firth Street, North East  
Charlottesville, Virginia 22902  
804-295-1144, TTY 804-295-3409,  
fax 804-295-1145

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**COVINGTON** Office Code: 0296

Social Security Administration  
1248 South Craig Avenue  
Covington, Virginia 24426  
540-962-4941; fax 540-962-3065

**CULPEPER** Office Code: 0A92

Social Security Administration  
400 South Main Street, Suite 101  
Culpeper, Virginia 22701  
540-825-3501; fax 540-825-2068

**DANVILLE** Office Code: 0292

Social Security Administration  
875 Piney Forest Road  
Danville, Virginia 24540  
804-836-6821, TTY 804-836-6821;  
fax 804-836-0934

**FAIRFAX** Office Code: 0318

Social Security Administration  
11212 Waples Mill Road, Suite 105  
Fairfax, Virginia 22030  
703-691-8281; fax 703-591-7031

**FARMVILLE** Office Code: 0301

Longwood Shopping Center  
Social Security Administration  
1506 South Main Street  
Farmville, Virginia 23901  
804-392-8121; fax 804-392-6887

**FREDERICKSBURG** Office Code: 0A38

Social Security Administration  
610 Westwood Office Park  
Fredericksburg, Virginia 22401  
540-371-8895; fax 540-899-0687

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**HAMPTON** Office Code: 0C81

Social Security Administration  
The Shops at Hampton Harbor  
1026 E Settler's Landing Road,  
Ground Floor  
Hampton, Virginia 23669  
757-728-0221; TTY 757-722-3477,  
fax 757-723-1095

**HARRISONBURG** Office Code: 0C83

Social Security Administration  
227 East Elizabeth Street  
Harrisonburg, Virginia 22802  
540-433-3015; TTY 540-432-1638,  
fax 540-574-6121

**LYNCHBURG** Office Code: 0289

Social Security Administration  
2301 Park Avenue  
Lynchburg, Virginia 24501  
804-847-8824; fax 804-847-0224

**MANASSAS** Office Code: A39

Social Security Administration  
8700 Centreville Road  
Third Floor, Suite 301  
Manassas, Virginia 20110-8411  
703-369-8401; fax 703-368-6537

**MARTINSVILLE** Office Code: 0A40

Social Security Administration  
Citizen Bank Building, Second Floor  
231 East Church Street  
Martinsville, Virginia 24112  
540-632-6446; fax 540-632-0091

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**MIDLOTHIAN** Office Code: 0A41

Social Security Administration  
Chesterfield Office  
Village at Waterford  
13564 Waterford Place  
Midlothian, Virginia 23112  
804-744-0227; fax 804-744-8129

**NEWPORT NEWS** Office Code: 0293

Social Security Administration  
11828 Fishing Point Drive  
Newport News, Virginia 23606  
757-873-3914; fax 757-873-0422;

TTY 757-873-0510

**NORFOLK** Office Code: 0287

Social Security Administration  
5425 Robin Hood Road, First Floor  
Suite 100

Norfolk, Virginia 23513

757-858-6198; TTY 757-858-6228

fax 757-858-6199

**PETERSBURG** Office Code: 0291

Social Security Administration  
105 Holly Hill Drive

Petersburg, Virginia 23805

804-862-6080; fax 804-733-8830

**PORTSMOUTH** Office Code: 0302

Social Security Administration  
3248 Academy Avenue

Portsmouth, Virginia 23703

757-686-3830; fax 757-686-3826

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**RICHMOND (Downtown)** Office Code: 0285

Social Security Administration  
718 East Franklin Street

Richmond, Virginia 23219

804-771-8125; TTY 804-771-2625

fax-804-771-2167

**RICHMOND (East)** Office Code: 0300

Social Security Administration  
4501 Williamsburg Road, Suite P

Richmond, Virginia 23231

804-226-3708; fax-804-771-8356

**RICHMOND (West)** Office Code: C82

Social Security Administration  
Spotswood Building, Second Floor  
8003 Franklin Farms Drive

Richmond, Virginia 23229

804-673-7555; fax 804-673-8955

**ROANOKE** Office Code: 0286

Social Security Administration  
116 North Jefferson Street

Roanoke, Virginia 24016

540-857-2190; fax 540-857-2488

**SOUTH BOSTON** Office Code: 0304

Social Security Administration  
2049 Hamilton Boulevard

South Boston, Virginia 24592  
804-572-6906; fax 804-572-1976  
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**STAUNTON** Office Code: 0290  
Social Security Administration  
Greenbrier Office Park, Building Two  
1600 North Coalter Street  
Staunton, Virginia 24401  
540-885-8959, TTY 540-885-8051  
fax 540-886-0605

**VIRGINIA BEACH** Office Code: 0B56  
Social Security Administration  
2875 Sabre Street, Suite 100  
Virginia Beach, Virginia 23452  
757-498-8726, TTY 757-431-3165  
fax 757-498-8511

**WINCHESTER** Office Code: 0295  
Social Security Administration  
12 Ricketts Drive  
Winchester, Virginia 22601  
540-667-1511; fax 540-667-7912

**WISE** Office Code: 0299  
Social Security Administration  
251 Ridgeview Center  
Route US 23 North  
Wise, Virginia 24293-1409  
540-679-7633; TTY 800-325-0778  
fax 540-679-0107

**WYTHEVILLE** Office Code: 0298  
Social Security Administration  
Mountain View Square  
1480 East Main Street  
Wytheville, Virginia 24382  
540-228-4699; TTY 800-325-0778  
fax-540-228-7686

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## **APPENDIX 2**

### **MILITARY PAY INFORMATION**

### **RETIREE INFORMATION**

### **ARMY, NAVY, AIR FORCE, MARINE CORPS**

Defense Finance Accounting Service (DFAS) Cleveland Center

Retiree Pay

Anthony J. Celebrezze Federal Building

1240 East Ninth Street

Cleveland, Ohio 44199-2055

Telephone: 1-800-321-1080

**COAST GUARD**

Coast Guard Human Resources Service and Information Center

444 Southeast Quincy Street

Topeka, Kansas 66683-3591

Telephone: 1-800-772-8724

**ACTIVE DUTY INFORMATION**

**NAVY**

Defense Finance Accounting Service Cleveland Center (DFAS)

Active Duty Pay

Anthony J. Celebrezze Federal Building

1240 East Ninth Street

Cleveland, Ohio 44199-2055

Telephone: 1-800-346-3374

216-522-5955

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**ARMY**

DFAS-IN

8899 East 56<sup>th</sup> Street

Indianapolis, Indiana 46249

Telephone: 1-888-729-2769

Request must include:

Soldier's Name

Social Security Number

Branch

Time period(s) for Leave and Earnings Statements (LES) needed

Address for military installation to which they should be sent.

(Leave and Earnings Statements will only be sent to military installations.)

**AIR FORCE**

Defense Finance Accounting Service (DFAS) Denver Center

Building 444

6760 East Irvington Place

Denver, Colorado 80279

Telephone: 1-800-755-7431

**MARINE CORPS**

Defense Finance Accounting Service (DFAS) Kansas City Center

1500 East 95<sup>th</sup> Street

Kansas City, Missouri 64197-0001

Telephone: 1-800-594-8302

**COAST GUARD**

Coast Guard Human Resources Service and Information Center  
444 Southeast Quincy Street  
Topeka, Kansas 66683-3591  
Telephone: 1-800-772-8724

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## **PART 5 EVIDENCE**

An allegation of fraud must be resolved by the gathering of evidence. Evidence is obtained

from various sources, both from within and outside the local agency.

The primary purpose of evidence is to assist the investigator in arriving at the truth and may

prove or disprove the allegation.

The type and volume of evidence can have a major impact on the outcome of an investigation,

it is important for the investigator to understand the basic rules of evidence.

When in doubt

about the validity or admissibility of evidence, the investigator should consult with the

Commonwealth's Attorney.

### **A. Rules of Evidence**

#### **1. Relevance**

**In order to be admissible, evidence must be relevant. Determine its relevance by asking whether it tends to make a fact that is of consequence to the allegation more probable than it would be without that evidence. If not, the evidence is not relevant, and its reception, consideration, or incorporation into the investigative report is not appropriate. The question of relevancy often arises in the consideration of circumstantial evidence.**

## **2. Materiality**

**Understanding the difference between relevancy and materiality is useful in analyzing a case. Evidence is *relevant* if it tends to make a fact more probable. A fact is *material* if it tends to prove or disprove an**

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**allegation.**

## **3. Competence**

**In obtaining and evaluating information, consider whether the circumstances by which it was obtained support a belief in its accuracy or truthfulness.**

### **Example**

**Statements by a witness with a history of lying, or impaired perception, or with a strong bias or prejudice, are likely to be of limited value in establishing facts. Similarly, a confession or statement containing information contrary to one's interest or benefit obtained by coercion will not be as reliable as one obtained fairly and freely.**

## **4. Authenticity**

**In obtaining and evaluating information, consider its authenticity - is it what it claims to be? Is the signature on the document really that of the person whose name it conveys? Issues of authenticity are generally resolved by the quality or lack of proof of the chain of custody. Being given under oath also bolsters the authenticity of testimony.**

## **5. Hearsay**

**Hearsay is written or verbal testimony recounted by a witness based on what he/she heard rather than on what he/she has first-hand knowledge of through observation or participation. The hearsay rule is based on the theory that testimony that merely repeats what some other person**

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**said should not be admitted because of the possibility of distortion or misunderstanding. Furthermore, the person who made the actual statement is not available for cross-examination and was not sworn in as a witness. Witnesses can testify only to those things which they have personal and direct knowledge, not conclusions, or opinions. However, there are occasions and/or exceptions, when hearsay evidence is admissible, for example:**

### **a. Dying declarations**

**Either verbal or written**

### **b. Valid confessions**

**The acknowledgement of all the facts upon which a criminal conviction stands**

**c. Tacit admissions**

**Statements that falls somewhat short of a full acknowledgement**

**d. Public records**

**That does not require an opinion, but speaks for them**

**e. Res gestae statements**

**Spontaneous explanations, if spoken as part of the criminal act or immediately following the commission of such criminal act.**

**Comments made by the defendant at a time of great emotional strain, i.e., at the time of arrest or at the scene of an accident. The**

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**theory is the likelihood that such a statement made at such a time is truthful**

**f. Former testimony given under oath**

**g. Business entries**

**Made in the normal course of doing business.**

**B. Sources of Evidence**

**Evidence includes information obtained from:**

**1. Witnesses**

**Witnesses may be testimonial (oral descriptions of statements, acts, and events) or demonstrative. It may constitute first hand knowledge of witnesses, or recitation of what they learned from others (hearsay).**

**a. Preserving oral evidence**

**Many of the facts developed in investigations are based on oral evidence obtained during an interview that is subsequently reduced to writing in some manner. Ensuring the accuracy of the writing is not easy, but is essential to a professional investigation.**

**The techniques include:**

**1) Investigator's notes**

**2) An interview report written by the investigator**

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**3) A written statement prepared by the investigator and/or the interviewee that is signed by the interviewee**

**4) The sworn statement of the interviewee**

**5) A tape or stenographic recording of the interview that is available for subsequent transcription.**

**b. If evidence is recanted**

The ultimate consideration is the investigator's ability to establish the facts presented in the investigative report. Supporting documents must be accurate and complete when the person from whom those facts were obtained denies them. A result is the ability of the trial attorney to use the investigator's work product to impeach and discredit a recanting witness. At the very minimum, investigators should review their notes with interviewees before concluding the interview. The investigator may write important facts in sentence form and ask the witness to initial them to indicate agreement.

## **2. Witnesses who have first-hand or personal knowledge**

These witnesses having first-hand or personal knowledge of facts important to prove or disprove an allegation should be asked to provide sworn statements. This is particularly important when the nature of an allegation is such that disciplinary action is likely to result if it is substantiated. In many cases, the most candid statements are obtained

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**if they are prepared and signed before the interview is concluded.**

**a. At the investigator's discretion, interviewees may be asked to read the investigator's interview notes or subsequent report of the interview, to help ensure accurate reporting. This may help investigators ensure they understood the interviewee and may combat later charges they did not accurately report what the interviewee said. Interviewees who pose no objections effectively adopt the investigator's statements as their own. This technique is particularly helpful with expert witnesses, or others who provide technical information in areas with which the investigator is unfamiliar.**

**b. Investigators should decline to provide interviewees copies of their notes or reports of interview because inadvertent disclosure of such documents to others could prejudice the investigation. It may also be pointed out that a witness who does not have such a document cannot be pressured into providing it to others. The situation is more difficult when witnesses are asked to prepare their own statements, and the investigator may have to be more flexible in those cases.**

## **3. Documents**

**Documents may be obtained by the investigator merely to prove their existence (there was an application), or to establish the substance of their contents (the application was signed by a specific person).**

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#### **4. Physical Objects**

**Physical objects may be used to demonstrate their existence or identity (the serial number on the notebook computer found in a private residence establishes it is government owned property). It may also demonstrate a particular characteristic or quality of the object that is subject to tampering without careful control (chain of custody) of its handling (data tending to prove a violation of the Procurement Integrity Act, stored in the computer at the time it was found in the residence, has not been altered since the computer was seized at the residence).**

#### **5. Tax Returns**

**Inquiries stemming from allegations of financial irregularities may conclude that tax return information would add to the store of useful knowledge. But Section 6103 of the Internal Revenue Code greatly restricts the disclosure of federal tax returns and return information. A disclosure can be predicated on a need for investigation of a non-tax federal crime. It requires a showing that:**

- a. A specific federal crime was committed**
- b. The return or other information may be relevant to a matter relating to the commission of the crime**
- c. The return or other information is sought exclusively for use in a federal criminal investigation or proceeding concerning the crime**
- d. The information sought cannot reasonably be obtained from**

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**another source (26 U.S.C. 6103 (i) (1) (A) and (B))<sup>1</sup>. Because investigations involve the Virginia Department of Social Services whose programs are funded by federal and state government, this provision applies.**

#### **6. Financial institutions**

**Inquiries or investigations may also raise a need for information maintained by financial institutions. Access to such information (e.g. bank account records) is restricted by the Right to Financial Privacy Act (RFPA), 12 USC 3401<sup>2</sup> et. seq. Basically, such information can only be**

**<sup>1</sup> (i) Disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration**

(1) Disclosure of returns and return information for use in criminal investigations (A) In general Except as provided in paragraph (6), any return or return information with respect to any specified taxable period or periods shall, pursuant to

and upon the grant of an ex parte order by a Federal district court judge or magistrate judge under subparagraph (B),

be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and

employees of any Federal agency who are personally and directly engaged in— (i) preparation for any

judicial or administrative proceeding pertaining to the enforcement of a specifically designated Federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party, (ii) any investigation which may result in such a proceeding, or (iii) any Federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party, solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding. (B) Application for order The Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, may authorize an application to a Federal district court judge or magistrate judge for the order referred to in subparagraph (A). Upon such application, such judge or magistrate judge may grant such order if he determines on the basis of the facts submitted by the applicant that— (i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed, (ii) there is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act, and (iii) the return or return information is sought exclusively for use in a Federal criminal investigation or proceeding concerning such act, and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

## **2 Title 12, CHAPTER 35 § 3401 Definition**

For the purpose of this chapter, the term— (1) “financial institution” means any office of a bank, savings bank, card issuer as defined in section 1602 (n) of title 15, industrial loan company, trust company, savings association, building

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**disclosed by the financial institution to the government if the customer has consented to disclosure, or in response to an administrative summons or subpoena; a search warrant; or other formal written request.**

### **C. Categories of Evidence**

**The investigator must deal with several categories of evidence and understand the distinctions between them. The most important include direct**

**versus circumstantial evidence, and fact versus opinion evidence.**

#### **1. Direct Evidence**

**Evidence, in whatever form, may tend to prove or disprove a fact either directly or indirectly (circumstantially). A fact is proved by direct evidence when the witness has actual, or direct, knowledge of the fact**

and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution,

located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or

the Virgin Islands; (2) "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution;

(3) "Government authority" means any agency or department of the United States, or any officer, employee, or agent thereof; (4) "person" means an individual or a partnership of five or fewer individuals; (5) "customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name; (6) "holding company" means — (A) any bank holding company (as defined in section 1841 of this title); (B) any company described in section 1843 (f)(1) of this title; and (C) any savings and loan holding company (as defined in the Home Owners' Loan Act [12 U.S.C. 1461 et seq.]); (7) "supervisory agency" means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary— (A) the Federal Deposit Insurance Corporation; (B) Director,<sup>[1]</sup> Office of Thrift Supervision; (C) the National Credit Union Administration; (D) the Board of Governors of the Federal Reserve System; (E) the Comptroller of the Currency; (F) the Securities and Exchange Commission; (G) the Commodity Futures Trading Commission; (H) the Secretary of the Treasury, with respect to the Bank Secrecy Act (Public Law 91–508, title I) [12 U.S.C. 1951 et seq.] and subchapter II of chapter 53 of title 31; or (I) any State banking or securities department or agency; and (8) "law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

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**to be proved, and does not need to rely on facts the witness did not actually observe, but only inferred from other facts known to the witness.**

## **2. Circumstantial Evidence**

**When direct evidence cannot be obtained to establish a fact, the existence of that fact may sometimes be established because reasonable persons are willing to draw inferences from other facts. Circumstantial evidence is direct evidence of one or more facts from which other facts may be inferred, or established indirectly, because there is a logical relationship between them.**

### **a. Importance of distinction**

**It is important to appreciate the difference between direct and circumstantial evidence because circumstantial evidence leaves room for an alternate explanation of what really happened that the investigator may need to explore. Witnesses may think they know**

**something directly, and present it in that manner, when in fact they are really drawing inferences from indirect or circumstantial evidence. When a witness says, "I know fact A occurred" it is important for the investigator to establish the actual basis for that assertion. In far too many cases, careful examination by the investigator will disclose the witness does not really know fact "A" occurred, but only that facts "B" and "C" did. Test a witness's statements by probing follow-up questions, such as, "why do you**

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**think that?" and, "how do you know that?" Do not reject evidence because it proves to be circumstantial, but be aware such evidence should be more critically evaluated and, when possible, corroborated with additional evidence.**

#### **b. Fact versus opinion**

**Opinions are generally conclusions premised on facts and the interpretation of those facts. In some cases, observations of physical details are not always sufficient to form a valid opinion.**

#### **c. Limitation on use of opinion evidence**

**In court proceedings and in many administrative actions, opinion testimony by laymen (people who are not "experts") is generally not admissible. When obtaining and evaluating evidence, this distinction should be recognized. It is always necessary to ask for the facts that underlie an opinion. However, ordinary people form opinions about certain events as a result of their everyday experiences, and may be permitted to give their "opinions" as to those events. The most common example is permitting a lay witness to testify as to the speed of a moving vehicle. Remember that people become "experts" by experience as well as education and training. Many government employees can be considered experts in their line of work.**

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### **3. Real Evidence (physical evidence)**

**Anything seen or felt is classified as real. To ensure its admissibility, the investigator must be able to show the item offered for admission at the hearing is the same item the investigator recovered. This insurance is accomplished through a process known as "chain of custody".**

#### **4. Demonstrative Evidence**

**Items or actions used to demonstrate events that occurred (diagrams,**



reconstruction of an experiment, or a visual aid). For this evidence to be admissible, it must be established it is substantially similar to the original item, and that it is a fair, accurate and truthful representation.

#### **5. Corroborating Evidence**

Statements from two unbiased or disinterested sources to establish the existence of any fact. The statement of one witness and a document would satisfy this requirement. Complainants and subjects are not considered unbiased. However, when they agree that a particular event occurred, additional corroboration is unnecessary. This is one of the reasons why it is often advisable to conduct a preliminary interview of the subject early in the investigation. In many investigations, there is a general agreement about what happened; the rationale or motivation for the action is the real issue. Conversely, when there is no clear agreement as to what happened, the investigator should interview more witnesses, although it is the credibility of the witness, not sheer numbers, that leads the investigator to decide which statements to

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**accept as facts.**

#### **6. Documentary Evidence**

Any reports, including public records, business records, police reports, surveys and statistics, medical reports, publications, or memoranda are documentary evidence. Two problems with this type of evidence is quantity and, in some cases, who can testify to the authenticity of it.

##### **a. Self-authenticating documents**

Some documents do not require a witness to testify. Common documents considered to be self-authenticating are: documents bearing a foreign, federal or state seal, certified copies of TANF checks.

##### **b. Other documents**

Most documents require an authenticating witness. In almost all cases, the custodian of the document can testify to its authenticity. Most institutions designate custodians. If one is not designated; the witness should be the person who is physically in control of the document. Photocopies of documents are usually admissible in lieu of the original, unless there is a real issue as to the accuracy of the copy. Always obtain the name of the person who made the copies, and the date the copies were made, in case that person is needed to testify to the accuracy of the copies.

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**c. Using documents to refresh memory**

**Documents are an effective tool for prompting the memory of witnesses, especially reluctant ones. There are two evidentiary theories relating to this practice the investigator should understand:**

**1) Refreshing Present Recollection**

**The first theory assumes the witness, after reviewing the document, has an independent recollection of the events recorded in it, such as a meeting the witness attended. Reviewing the document merely served to "refresh" the witness' present recollection of what happened at the meeting. Under this theory, the real evidence is the witness' statement to the investigator (or testimony in court), not the contents of the document. Since the document is not the evidence, there is no hearsay problem with using the document this way. Indeed, any object or sound that would help the witness recall what happened at the meeting may be used for this purpose. When using a document to refresh the witness' present recollection of a meeting, the investigator would establish the following during the interview:**

**a) The witness indicates an inability to recall what happened at the meeting**

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**b) The witness recalls (or is shown) a document that may state what happened during the meeting**

**c) The witness reviews the document**

**d) The witness states he/she can recall what happened at the meeting.**

**Note: The witness tells the investigator what happened at the meeting (to test whether the witness really has an independent recollection, the investigator may want to take the document away from the witness while the witness relates what occurred during the meeting). In this situation, the document does not have to be an accurate accounting of what occurred during the meeting, since the witness is telling the investigator what happened. However, it is a good practice to get the witness to state whether the document is accurate, and, if not, to indicate what information is erroneous.**

**2) Past Recollection Recorded**

**Assume that, during the course of an interview, the investigator shows the witness their wage records, yet the witness still claims to be unable to remember their employment/payment history. By asking the witness a series of questions, the investigator may still be able to force the witness to concede the document accurately reflects what took place. This evidentiary theory is called "past recollection recorded." In this case, the document is the real evidence, and the witness is used to establish the reliability of the document in order to get around the**

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**problem that the document is hearsay if used to assert payment history. To employ this technique, the investigator would establish that:**

**a) At one time in the past, the witness had personal knowledge of salary, payment history, and/or employment history**

**b) The witness reviewed a document of their payment history within a reasonable period of time of receiving wages**

**c) The witness is willing to state at the time the document was prepared (or reviewed), it accurately reflected payment history**

**d) After reviewing the document during the interview, the witness is still unable to independently recall specifics concerning pay history.**

**Note: In this case, the document, not the witness, is asserting their pay history; it is clearly hearsay, both as to the investigator and as to a court. Its use is permitted because the witness is vouching that at one time he/she knew the document was accurate. The investigator can force reluctant witnesses to concede the accuracy of a document they prepared by asking:**

- Why they prepared the document**
- Whether they considered it important to be accurate at the time**

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- Whether they generally try to prepare accurate**

**documents**

- **Why they would prepare a document that was not accurate.**

**This makes the witness choose between conceding the accuracy of the document and admitting to negligence, if not outright falsification of what may be an official government document. Similarly, if the witness reviewed the document, he/she can be led to admit any inaccuracy they noted would be corrected upon review.**

#### **d. Photographic Evidence**

**When photography was a relatively new technique for the presentation of evidence, it was common for courts to require the person who took the photo to testify. The photographer had to be prepared to describe the photographic equipment, the film used, the type of lens, and the settings on the camera. Cross-examination frequently centered on establishing the photograph presented a distorted depiction of the scene. The modern view of photographic evidence is that anyone familiar with the scene or object depicted in the photograph may be used to introduce and verify the accuracy of the photo. Nevertheless, considering the remarkable capability to "doctor" photographs and video film that exists today, the investigator should always be alert for the possibility of tampering. Usually it is sufficient for the investigator to establish that:**

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**1) The witness is familiar with the object/scene depicted in the photo**

**2) The witness can explain the basis for his/her familiarity with the object/scene (where the object/scene has changed over time, for example, during construction of a building, the witness should indicate the basis for familiarity at the time the photo was taken)**

**3) The witness recognizes the object or scene in the photograph**

**4) The witness says the photograph is an accurate (fair, true, good, etc.) depiction of the object/scene at the pertinent time.**

#### **D. Best Evidence Rule**

**This old rule once required the production of the original document in order to**

**prove its contents. Modern technology has largely done away with its application in the courtroom. Nonetheless, equipment may not produce a**

true

copy of a document if the writing on the original is too light, or of a certain color that does not reproduce well. In general, a photographic copy is accepted in legal proceedings unless the opposing party can articulate a specific reason why it may not be accurate. In such cases, it may become necessary to produce the original, or a certified copy from the custodian of the

document. Thus investigators should document their files to indicate where

the originals of important documents are obtained.

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**Investigators should also note the best evidence rule applies only to "writings" such as printed or typed documents, tape recordings, computer tapes, photographs, video tapes, and the like. It does not apply to testimonial**

**evidence. Although the subject's admission he/she accepted a gift from a contractor may be more persuasive than the same testimony from a witness**

**(and in that sense may constitute the best evidence to prove the fact) the best**

**evidence rule applies only to writings, and is not used to preclude use of the**

**witness to prove the fact.**

**Note: Simply because writing may record what happened at a particular event such as a meeting, it does not preclude a participant in the meeting from testifying as to what took place during the meeting based on the witness' present recollection, with or without reference to the document.**

#### **E. Collection of Evidence**

**To achieve the maximum benefit from physical evidence, the investigator must**

**properly handle it between the time it is collected and the time it is presented in**

**a hearing/court. The admissibility of a piece of evidence will depend upon the**

**manner in which it was collected and safeguards were followed to ensure its**

**integrity at the time of presentation at a proceeding.**

**The total accounting for evidence is what is known as the "chain of custody".**

**This chain is comprised of all those individuals who had custody of the evidence since its acquisition by the investigator. Each individual in the**

## **chain**

**of custody is responsible for the care, safekeeping, and preservation of evidence while it is under his/her control.**

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### **1. Chain of Custody**

**All evidence shall be properly marked for identification as soon as it is collected, or as soon as possible thereafter. Chain of custody issues relates to proving the authenticity of evidence. The chain of custody is established by adhering to the following guidelines:**

- a. The number of persons handling the evidence from the time it is found until it is safely stored should be limited**
- b. If the evidence leaves the possession of the investigator, the investigator shall record in his notes to whom the evidence was given, the date and time, and the reason it left his possession**
- c. Individuals who handle evidence shall affix their name and assignment to the package containing the evidence**
- d. A signed receipt shall be obtained from the person accepting the evidence. In return, the investigator should sign a receipt or log when the item is returned to them**
- e. When a piece of evidence is returned, the investigator shall determine if the item is the same item and is in the same condition as when it was discovered**

**The most important point of “chain of custody” is to stand in an administrative hearing or court of law and swear the evidence collected is the same evidence presented.**

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### **2. Sealing and Labeling Evidence**

**Once evidence is collected, it must be properly preserved, sealed, and labeled. Sealing is done by using such items as heat-sealed envelopes or evidence seal tape. Each type of evidence is placed in a separate container. The investigator should seal boxes, envelopes, tubes, jars, bottles, and cartons containing evidence in such a manner they are not opened without breaking the seal. If an investigator breaks the seal affixed to the container, the investigator shall write his name or number across the sealed flap of the evidence envelope.**

**After the physical evidence is properly marked and placed securely in a sealed container, a label is affixed which contains identifying information. The following details should be listed on the label:**

- a. Case number
- b. Exhibit number (when a number of items are seized)
- c. Name and description of the article
- d. Location at the time of discovery
- e. Signature or initials of the investigator who made the discovery
- f. Names or initials of witnesses to the discovery.

### **3. Receipt Forms**

**The loss of a piece of evidence is serious. Therefore, an evidence receipt form must be used to keep track of evidence (See Investigation**

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**Report Form). The investigator must place the original in a central file in the unit, give one copy to the person from whom the evidence was obtained, and retain a copy for his records. The form shall contain the following information:**

- a. File title
- b. Complaint number
- c. Name and address of person from whom the evidences was obtained
- d. Investigator's name
- e. Date evidence was obtained
- f. Time evidence was obtained
- g. List of evidence obtained.

### **4. Destruction of Evidence**

**In general, responsibility for the destruction of evidence rests initially with either the court in which the case was tried or with the agency, which seized or found and preserved the evidence. In some jurisdictions, once the evidence is introduced into the legal proceedings and accepted as evidence in the case under consideration, the court retains the evidence and preserves it until destruction. In this instance, the evidence is not returned to the agency, which formerly maintained custody of it. Items not accepted by the court as evidence are returned**

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**to the agency.**

**In administrative hearings, all items, regardless of whether they are accepted as evidence, are returned to the agency. The following procedure should be followed for disposition of evidence:**

- a. Upon the closing of a case, the investigator is responsible for the disposition of evidence, but only after the appeal process (if one

is available) is complete.

**b. If the evidence consists of items that do not need returning, the destruction should be by incineration.**

**c. Upon destruction of the evidence, the investigator must complete and file a "Certificate of Destruction" (See Forms Section on the Fraud web page or in PART 14 of the FREE Manual). The certificate must include:**

**1) Case number**

**2) File name**

**3) Evidence destroyed**

**4) Time, date and location of destruction.**

**d. As a personal protection, destruction of negotiable items, i.e., EBT cards, etc. must be witnessed and noted on the Certificate of Destruction.**

**e. If the evidence is returned to the owner, by the investigator, this**

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**return must be documented on the evidence form and signed by the investigator as well as the owner and dated.**

## **5. Privileges**

**Certain types and sources of information have restrictions imposed by law on their solicitation and use.**

### **a. Self-incrimination**

**Solicitation of information can raise a witness' Constitutional right against compulsory self-incrimination. The Fifth Amendment guarantees that no person "shall be compelled in any criminal case to be a witness against himself".**

**Its application extends to investigations that may furnish leads on which a criminal prosecution is based. Thus, questions asked in the context of an investigation must be considered in light of the right against self-incrimination.**

**b. The law generally requires suspects in custody be advised of their right to remain silent or refuse to respond to questions that may require incriminating answers.**

### **3 Bill of Rights, Amendment V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment

of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war

or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor

shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property,

without due process of law; nor shall private property be taken for public use, without just compensation.

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**1) Courts generally interpret “custody” as any set of circumstances that deprive people of their freedom in any significant way.**

**2) Investigators who interview suspects whose statements are used for criminal prosecution should check with the Commonwealth’s Attorney/Office of Attorney General regarding Miranda warnings.**

**c. Attorney-Client**

**Communications made by a person to his attorney for the purpose of obtaining legal advice or representation is privileged. The privilege belongs to the client: he/she can stop the attorney from divulging the information conveyed by the client. An exception exists where the communication was made in connection with the future commission of a crime.**

**d. Spousal**

**There are two spousal privileges. The first allows one spouse, during the existence of the marriage, to refuse to testify against the other spouse. The second applies to confidential communications made during the marriage. It applies even after the marriage is ended, and is asserted by the spouse who made the confidential communication. These privileges should not bar solicitation of information in an investigation. However, subsequent use of such information in a more formal proceeding**

**may be barred.**

**6. Doctor-patient**

**There is no generally recognized or common law doctor- patient privilege, but some jurisdictions have created the privilege by statute.**

**7. Communications to Clergy**

**To be recognized as confidential, communications to a clergyman must be made as a formal act of religion or as a matter of conscience. The communicant owns the privilege.**

**8. Declarations versus Affidavits**

**When taking sworn statements, investigators should consider putting them in the form of a declaration rather than an affidavit. Technically, an affidavit must be notarized. A declaration executed pursuant to 28 USC 1746<sup>4</sup> is acceptable in court without being notarized.**

**Federal court decisions interpreting 28 USC 1746 routinely hold that those who make false statements in a declaration that contains the**

#### **4 Sec. 1746. Unsworn declarations under penalty of perjury**

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form: (1) If executed without the United States: ``I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)". (2) If executed within the United States, its territories, possessions, or commonwealths: ``I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

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**language "under penalty of perjury" may be charged with perjury under 18 USC 1621<sup>5</sup>, just as if the statement were made under oath, and declarations may be used in lieu of sworn statements or affidavits to support or oppose motions for summary judgment.**

#### **F. Burden of Proof**

The burden of proving a client committed an IPV or fraud lies with the investigating agency. The accused does not have to prove his innocence; the investigator has to prove the accused **intended to commit fraud**. Therefore, it is important the evidence gathered during the investigation is sufficient to meet the appropriate burden of proof.

There are three different standards of proof, or levels of evidence, associated with

fraud investigations:

##### **1. Probable Cause**

Reasonable doubt; required to obtain an arrest warrant for an individual; standard for determining if there is enough evidence to send a felony matter to the Grand Jury or Circuit Court.

#### **5 Sec. 1621. Perjury generally**

Whoever--(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or (2) in any declaration,

certificate,  
verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code,  
willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall,  
except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both.  
This section is applicable whether the statement or subscription is made within or without the United States.  
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## 2. Clear and Convincing Proof

Proof beyond a reasonable or well-founded doubt. More than preponderance but less than is required in a criminal case. This is required for a finding of guilt in an Administrative Disqualification Hearing (ADH). Clear and convincing evidence is complete, explicit evidence that would satisfy a reasonable person.

## 3. Beyond a Reasonable Doubt

Satisfied to a moral certainty. The facts proven must, by virtue of their probative force, establish guilt. This is required to obtain a criminal conviction. Evidence beyond a reasonable doubt excludes all other reasonable possibilities as to the truth of the matter at issue.

## G. Benefit-Related Evidence

§ 2.2-1812<sup>6</sup> of the Code of Virginia allows for the introduction of certified copies of state checks as evidence in court. State checks include, but are not limited to, **Temporary Assistance for Needy Families (TANF)**, Child Support and Unemployment Compensation checks.

### **6 § 2.2-1812. Admissibility of reproductions of checks in evidence; compliance with subpoena**

A. A reproduction of any check or draft or an enlargement of such reproduction drawn by the State Treasurer, when satisfactorily identified, shall be admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence. The introduction of a reproduced check or draft or of an enlargement thereof shall not preclude admission of the original. Any such check or draft, reproduction or enlargement purporting to be sealed, sealed and signed, or signed alone by the State Treasurer or on his behalf by his designee, may be considered satisfactorily identified and admitted as evidence, without any proof of the seal or signature, or of the official character of the person whose name is signed to it. B. The State Treasurer or his designee, when served with any summons, subpoena, subpoena duces tecum or order, directing him to produce any check or draft kept by or in the possession of any agency or institution of the Commonwealth, may comply by certifying a reproduction or enlargement in accordance with subsection A and mailing the reproduction or enlargement in a sealed envelope to the clerk of court. Upon good cause shown, any court may direct the Treasurer or his designee to appear personally, notwithstanding any other provision of this section.

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### 1. TANF Checks

If the investigation involves the TANF program, the investigator must obtain a payment history from the ADAPT system. This record of TANF benefits issued to the client can be used as evidence in an Administrative Disqualification Hearing.

If the case **is** referred for prosecution, the investigator must request certified copies of the TANF checks. The investigator must complete a Request for Copies of Benefit Checks, **(See Forms Section on the Fraud web page or in PART 14 of the FREE Manual); this form is** ordered through General Services or accessed through the Department of Social Services Internet web site. The investigator must include the payee name, case number, and the date, amount and warrant number of the check(s). The warrant number can be obtained from the ADAPT payment history or from local agency warrant registers.

**NOTE: The Fraud Processing Unit (FPU) is only required by law to retain records for three to seven years, depending on the specific record. It is suggested that the request for certified copies is as soon as the problem is realized so that originals are available.**

The Request for Copies of Benefit Checks is sent to:

#### **Fiscal Processing Unit (FPU)**

Division of Finance

Virginia Department of Social Services (VDSS)

### 2. Unemployment Compensation Checks

For cases involving unreported Unemployment Compensation (UC) received

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from the State of Virginia which **is** referred for prosecution, the investigator must request certified copies of the UC checks using the Request for Copies of Benefit Checks **(See Forms Section on the local agency web site page, Form Number 032-03-850)**. The warrant number(s) of the check(s) must be obtained from the UC history screen in the VEC on-line system. The Request for Copies of Benefit Checks is sent to:

Department of the Treasury

Post Office Box 1879

Richmond, Virginia 23219

### 3. Child Support Checks

The Request for Copies of Benefit Checks **is** used to obtain copies of checks received by **Division of Child Support Enforcement (DCSE)**. The Request for Copies of Benefit Checks is sent to:

Division of Child Support Enforcement

Division of Finance

Virginia Department of Social Services (VDSS)

#### 4. Certified Record of Medicaid Expenditures

If a case involving the fraudulent receipt of Medicaid benefits **is** referred for prosecution by the local agency, the investigator must request from DMAS a record of claims paid by Medicaid, **Medicaid Claims Request form (See Forms Section on the Fraud web page or in PART 14 of the FREE Manual)** for the individual(s) involved in the investigation. Pursuant to § 8.01-390<sup>7</sup> and § 8.01-391<sup>8</sup> of the Code of Virginia, DMAS will provide

**7 § 8.01-390. Nonjudicial records as evidence**

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certification by means of a Custodian's Certificate. See APPENDIX 1 for a sample Custodian's Certificate **(this form is for DMAS use only)**.

#### 5. Certified Record of Benefits from Closed TANF and/or Food Stamp Cases

Should a local agency require, for court purposes, a payment history from a TANF and/or Food Stamp case purged from the ADAPT system; the fraud  
Copies of records of this Commonwealth, of another state, of the United States, of another country, or of any political subdivision or agency of the same, other than those located in a clerk's office of a court, shall be received as prima

facie evidence provided that such copies are authenticated to be true copies either by the custodian thereof or by the

person to whom the custodian reports, if they are different. B. An affidavit signed by an officer deemed to have custody

of such an official record, or by his deputy, stating that after a diligent search, no record or entry of such record is found

to exist among the records in his office is admissible as evidence that his office has no such record or entry.

#### **8 § 8.01-391. Copies of originals as evidence**

A. Whenever the original of any official publication or other record has been filed in an action or introduced as

evidence, the court may order the original to be returned to its custodian, retaining in its stead a copy thereof. The court

may make any order to prevent the improper use of the original. B. If any department, division, institution, agency,

board, or commission of this Commonwealth, of another state or country, or of the United States, or of any political

subdivision or agency of the same, acting pursuant to the law of the respective jurisdiction or other proper authority,

has copied any record made in the performance of its official duties, such copy shall be as admissible into evidence

as the original, whether the original is in existence or not, provided that such copy is authenticated as a true copy

either by the custodian of said record or by the person to whom said custodian reports, if they are different, and is

accompanied by a certificate that such person does in fact have the custody. C. If any court or clerk's office of a court

of this Commonwealth, of another state or country, or of the United States, or of any political subdivision or agency of

the same, has copied any record made in the performance of its official duties, such copy shall be admissible into

evidence as the original, whether the original is in existence or not, provided that such copy is authenticated as a true

copy by a clerk or deputy clerk of such court. D. If any business or member of a profession or calling in the

regular  
course of business or activity has made any record or received or transmitted any document, and again in  
the regular  
course of business has caused any or all of such record or document to be copied, the copy shall be as  
admissible in  
evidence as the original, whether the original exists or not, provided that such copy is satisfactorily identified  
and  
authenticated as a true copy by a custodian of such record or by the person to whom said custodian reports,  
if they be  
different, and is accompanied by a certificate that said person does in fact have the custody. Copies in the  
regular  
course of business shall be deemed to include reproduction at a later time, if done in good faith and without  
intent to  
defraud. Copies in the regular course of business shall include items such as checks which are regularly  
copied  
before transmission to another person or bank, or records which are acted upon without receipt of the  
original when  
the original is retained by another party. The original of which a copy has been made may be destroyed in  
the regular  
course of business unless its preservation is required by law, or its validity has been questioned. E. The  
introduction  
in an action of a copy under this section neither precludes the introduction or admission of the original nor  
the  
introduction of a copy or the original in another action. F. Copy, as used in this section, shall include  
photographs,  
microphotographs, photostats, microfilm, microcard, printouts or other reproductions of electronically stored  
data, or  
copies from optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a  
process  
which forms a durable medium for its recording, storing, and reproducing.

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investigator must request the record from:

Fraud Program Manager

Fraud Management

Virginia Department of Social Services

VDSS will provide certification by means of a Custodian's Certificate. See  
APPENDIX 2 for a sample Custodian's Certificate **(this form is for Home  
Office use only)**.

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Evidence

Fraud Reduction and Elimination Effort (FREE) Manual

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Appendix 1

APPENDIX 1

CUSTODIAN'S CERTIFICATE

Division of Long Term Care and Quality Assurance, Virginia Department of  
Medical

Assistance Services, Richmond, Virginia

To Wit:

I. Pursuant to § 8.01-390 and § 8.01-391, of the Code of Virginia, 1950 as amended, I, \_\_\_\_\_, Supervisor, Division of Long Term Care and Quality Assurance, Virginia Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia, do certify that the writings annexed to this Certificate, consisting of \_\_\_\_\_ page(s), are true and accurate copies of the Department of Medical Assistance Services Records of the \_\_\_\_\_ case unit, Medical Assistance Number(s) \_\_\_\_\_, for the dates from \_\_\_\_\_ through \_\_\_\_\_. I further certify that I am Custodian of and have custody of the originals of the writings annexed to the Certificate.

\_\_\_\_\_, Supervisor  
Commonwealth of Virginia  
Department of Medical Assistance Services  
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II. I, \_\_\_\_\_, Manager, Division of Long Term Care and Quality Assurance, Virginia Department of Medical Assistance Services, do hereby certify that the writings annexed to this certificate are true and accurate copies of the originals on file and of record in said Department, and the forenamed, \_\_\_\_\_, Custodian of these writings, reports to me.

\_\_\_\_\_, Manager  
Commonwealth of Virginia  
Department of Medical Assistance Services  
Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_  
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Appendix 2

APPENDIX 2  
CUSTODIAN'S CERTIFICATE

Fraud Management, Virginia Department of Social Services, Richmond, Virginia  
To Wit:

I. Pursuant to § 8.01-390 and § 8.01-391, of the Code of Virginia, 1950 as amended, I,

\_\_\_\_\_, **Fraud Program Manager, Fraud Management,**  
Virginia

Department of Social Services, **7 North Eighth Street**, Richmond, Virginia, do  
certify

that the writings annexed to this Certificate, consisting of \_\_\_\_\_ page(s), are  
true

and accurate copies of the Virginia Department of Social Services' payment  
records

of \_\_\_\_\_ case number, \_\_\_\_\_, for the  
dates

from \_\_\_\_\_ through \_\_\_\_\_. I further  
certify that I am Custodian of and have custody of the originals of the writings  
annexed

to the Certificate.

\_\_\_\_\_  
**Fraud Program Manager, Fraud Management**  
**Office of Audit Services**

Department of Social Services

Commonwealth of Virginia

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

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**Part XIII. COMPLIANCE**

Consistent with §63.1-58.2, Code of Virginia, the Virginia Department of Social Services (VDSS) will reimburse to agencies that fully comply with all policy and regulations promulgated

by the State Board, all direct costs to operate the local fraud unit. Direct costs are defined as the

salary and fringe benefits costs for the fraud investigator(s). In addition, the Department will

reimburse agencies for supporting costs of operations up to 15 percent of the fraud investigator's

salary and fringe benefit cost.

**A. Policy**

**1. Locality Plan** - The director of the local agency must agree to the conditions identified in the Statement of Assurance (located in the Locality Plan) and file an annual Locality Plan with the VDSS. The Plan will fully describe the agency's fraud prevention, identification and referral program. The Plan will provide details for the following areas:

- a. Front End Fraud prevention effort
- b. Traditional or ongoing investigation
- c. Staffing
- d. Supervisory responsibility
- e. Claim establishment and collections process
- f. Agreement between the agency and the Commonwealth's Attorney for prosecutable cases

**2. Staffing** – The Fraud FREE program will provide funding for new fraud investigator positions. The positions will be funded from the Fraud Recovery Special Fund, established under §63.1-58.2, Code of Virginia, as amended July 1, 1998. The director of the local agency should staff their fraud unit consistent with the reimbursable level identified, below. Only food stamp and TANF cases will be considered in computing staffing for the Fraud FREE program.

Total Number of FS/TANF Cases      Number of Fraud Investigator(s)

0 - 499 Shared Resources

500 - 1,399 0.50

1,400 - 1,799 0.75

1,800 - 3,599 1.00

3,600 - 5,199 2.00

5,200 - 6,999 3.00

a. To determine how to compute the staffing level for agencies with more than 6,999 cases: Divide the total number of FS/TANF cases by 1800.

This quotient, rounded down to the nearest whole number, will indicate

the total number of fraud investigators (ex. 16,689 FS/TANF cases divided by 1,800 equals 9.27, rounded down, for a total of nine (9) fraud investigators).

b. Any local agency with collection activity above 115 percent of the cost of the fraud investigator(s) position may request additional funding.

c. Small Caseload - Agencies with combined caseloads of food stamps and TANF of less than 500 are expected to develop a plan to share resources with neighboring agencies. Sharing resources may include hiring a shared fraud investigator to investigate cases in the participating local agency jurisdictions or entering into a contractual agreement with an outside vendor to provide investigative services. The VDSS will not reimburse less than 0.5-(1/2) FTE investigator position.

1) Exceptions - In the event that an agency believes its circumstances do not allow for sharing an investigator or contracting with an outside vendor, the agency director must contact the Fraud Program Manager to discuss problems associated with their utilizing either of those options. Barriers may include, but are not limited to, significant distance between agencies, the remote location of an agency, or an extremely small caseload. These situations will be evaluated individually in order to reach an acceptable resolution. Such exceptions are expected to be rare.

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d. The welfare reform efforts will result in many food stamp and TANF cases being closed. Since an agency's number of approved fraud investigator positions will be calculated on caseload size, the VDSS will closely monitor local agency activity to identify and minimize the effects that declining caseloads may have on these positions. An agency's failure to meet collection expectations, even though they experience declining caseloads, will result in a reduction of fraud investigator positions.

e. Fraud FREE will utilize a performance-based funding methodology for approval of position requests after the first year of operation. It is therefore, important to realize that the Fraud FREE staffing level is a maximum desirable staffing level. The agency should be careful not to pursue more fraud investigator(s) through this process than collection efforts will support.

f. Reimbursement of positions in Fraud FREE is for the direct costs (salary and fringe benefits) and supporting costs of operations up to 15 percent of the fraud investigator's salary and fringe benefit cost. The program does not provide reimbursement for supervisory, clerical or other related collections personnel.

### **3. Fraud FREE Staffing Allocation**

Food Stamp and TANF caseload data as of July 1998, obtained from the VDSS' Research and Legislative Services, was used to determine the number of fraud

investigators to be funded per agency. See CHAPTER A, PART XIII, APPENDIX 1.

**4. Fraud FREE Database Tracking System** - The system will enable state and local staff to track local costs, collections and reimbursements. This program will replace the current Fraud Activity Report and is a mandatory function of the local fraud unit.

(Note: All local agencies are expected to continue entering data in the Fraud Activity Report until automated management reports are incorporated into the Fraud FREE Database.

a. Upon implementation, all agencies are required to enter fraud referrals,

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investigative data, case dispositions and other necessary fields of information into the Fraud FREE Database Tracking System on a timely basis. This system will enable the VDSS to track the types of incidents of fraud and disposition of cases.

b. This information will provide data to examine and analyze trends in welfare fraud.

**5. Reimbursement** - §63.1-58.2, Code of Virginia, establishes a nonreverting Fraud Recovery Special Fund from which local agencies will be reimbursed for their share of approved costs for fraud investigator positions to the extent that funds are available.

a. Fraud FREE will reimburse on a monthly basis the direct costs (salary and fringe benefits) and supporting operation costs up to 15 percent of the fraud investigator's direct costs. Supporting operation costs may include mailing, travel and travel-related expenses, office supplies, and other expenses directly related to operating the Fraud FREE program. Direct costs will also include approved transportation costs for shared resource programs.

1) Reimbursement must be requested on a monthly basis. It does not cover supervisory, clerical or collections staff.

2) An accounting of the supporting operation costs will be required at the end of the program year.

b. Local agencies should report Fraud FREE expenditures (direct costs and supporting costs of operations) in the LASER Program 071, either Budget Line (BL) 891 (Fraud FREE Standard Program) or BL 892 (Fraud FREE Eligibility Administration Option). The reimbursement formula for BL 891 is 50%, federal/50%, Fraud Recovery Special Fund.

The reimbursement formula for (BL) 892 is 50%, federal/30%, state general fund/20%, Fraud Recovery Special Fund. In order to utilize (BL) 892, a senior eligibility worker position must be transferred from (BL) 831 (Eligibility Administration) to (BL) Eligibility Administration) to (BL) 892.

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**6. Training** - Training of fraud investigators will be provided by the VDSS and Virginia Institute of Social Services Training Activities (VISSTA).

a. Policy - Program start-up training of the Fraud FREE policy will be provided by the VDSS and is required for all Fraud FREE positions.

b. Fraud FREE Database Tracking System - Program start-up training of the Fraud FREE Database tracking system will be provided by the VDSS and is required for all Fraud FREE positions.

c. Skills - Skills training for fraud investigators will be provided by VISSTA.

This training will be available on a continuous basis and is voluntary.

Local agencies will be notified of courses and scheduling as VISSTA develops this information.

**B. Program Monitoring**

**1. Monitoring Activities** - The VDSS will monitor the local agency fraud activities to ensure that the local agency effort is sufficient to qualify for the full reimbursement. Monitoring will be done monthly by the VDSS. A report will be provided to local agencies quarterly.

**2. Non-Compliant Activities** - Any area of non-compliance or potential issues of non-compliance, will be reported to the director of the local agency for a corrective action plan. The local agency director will initiate appropriate changes to the program to ensure that the agency is in compliance. Non-compliance to policy and regulations jeopardizes local agency reimbursement of approved costs for the program.

**3. Reimbursement** - VDSS may cease Fraud FREE program reimbursement to a local agency for non-compliance with policy and regulations, or for failure to meet collection requirements. If funding is removed or reduced, the Code of Virginia, §63.1-58.2, requires that the local agency continue to assume all responsibility for all fraud prevention, identification and referral activities.

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**APPENDIX 1**

**PHASE I LOCALITIES**

AGENCY JULY '98 TANF/FS CASELOAD FTEs

RICHMOND 16,689 9

NORFOLK 15,680 9

NEWPORT NEWS 8,678 5

FAIRFAX/FALLS CHURCH 8,023 4

PORTSMOUTH 7,579 4

VIRGINIA BEACH 7,458 4

HAMPTON 5,416 3

CHESAPEAKE 5,384 3

ROANOKE CITY 5,081 2

HENRICO 4,350 2  
PRINCE WILLIAM 4,239 2  
SUFFOLK 3,822 2  
WISE 3,818 2  
DANVILLE 3,467 1  
CHESTERFIELD/ COLONIAL HEIGHTS 3,368 1  
PETERSBURG 3,310 1  
ALEXANDRIA 3,249 1  
LYNCHBURG 3,092 1  
TAZEWELL 2,908 1  
HENRY/MARTINSVILLE 2,718 1  
BUCHANAN 2,326 1  
ARLINGTON 2,267 1  
LEE 2,168 1  
ROCKINGHAM/HARRISONBURG 2,131 1  
CHARLOTTESVILLE 2,109 1  
RUSSELL 2,056 1  
MONTGOMERY 1,884 1  
ACCOMACK 1,763 .75  
CAMPBELL 1,733 .75  
PITTSYLVANIA 1,714 .75

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**PHASE I LOCALITIES (CONT.)**

AGENCY JULY '98 TANF/FS CASELOAD FTEs

HALIFAX 1,683 .75  
HOPEWELL 1,559 .75  
WASHINGTON 1,506 .75  
SMYTH 1,467 .75  
DICKENSON 1,448 .75  
AUGUSTA/STAUNTON 1,434 .75  
PULASKI 1,418 .50  
BEDFORD CITY/COUNTY 1,241 .50  
WYTHE 1,238 .50  
NORTHAMPTON 1,169 .50  
BRISTOL 1,119 .50  
ROANOKE COUNTY 1,110 .50  
SCOTT 1,077 .50  
BRUNSWICK 1,008 .50

MECKLENBURG 954 .50  
HANOVER 747 .50  
JAMES CITY 701 .50  
WESTMORELAND 632 .50  
CHARLOTTE 627 .50  
LOUISA 616 .50  
YORK/POQUOSON 608 .50  
FREDERICK 597 .50

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## **PHASE II LOCALITIES**

ALL OF THE AGENCIES LISTED BELOW WILL BE ALLOCATED .50  
FTE

AGENCY JULY '98 TANF/FS CASELOAD

FRANKLIN COUNTY 1,192

ISLE OF WIGHT 1,098

CARROLL 1,085

SPOTSYLVANIA 1,051

LOUDOUN 933

DINWIDDIE 932

ALBEMARLE 928

FREDERICKSBURG 898

GLOUCESTER 893

STAFFORD 889

SOUTHAMPTON 886

NOTTOWAY 885

CAROLINE 885

AMHERST 865

PRINCE EDWARD 841

CULPEPER 839

ROCKBRIDGE/BUENA VISTA/LEXINGTON 833

GREENSVILLE/EMORIA 823

WAYNESBORO 810

PATRICK 794

FRANKLIN CITY 794

BUCKINGHAM 754

FAUQUIER 747

WARREN 729

ALLEGHANY/COVINGTON 729

WINCHESTER 727  
SHENANDOAH 722

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**PHASE II LOCALITIES (CONT.)**

ALL OF THE AGENCIES LISTED BELOW WILL BE ALLOCATED .50  
FTE

AGENCY JULY '98 TANF/FS CASELOAD

ORANGE 690

GRAYSON 666

LUNENBURG 639

SUSSEX 636

MANASSAS 630

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GALAX 523

APPOMATTOX 504

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**PHASE III LOCALITIES**

ALL OF THE AGENCIES LISTED BELOW MUST SUBMIT A  
LOCALITY

PLAN INDICATING THE AGENCY'S PLAN TO SHARE RESOURCES

AGENCY JULY '98 TANF/FS CASELOAD

GILES 484

LANCASTER 476

NORTON 473

CUMBERLAND 472

PRINCE GEORGE 470

ESSEX 445

RADFORD 444

NELSON 443

KING GEORGE 427

FLOYD 422

NORTHUMBERLAND 372

CLIFTON FORGE 371

MIDDLESEX 359

GOOCHLAND 327

AMELIA 323

RICHMOND COUNTY 315  
SURRY 311  
MADISON 296  
BOTETOURT 294  
GREENE 293  
KING AND QUEEN 286  
CHARLES CITY COUNTY 266  
MATHEWS 263  
KING WILLIAM 256  
WILLIAMSBURG 232  
POWHATAN 213  
FLUVANNA 203

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### **PHASE III LOCALITIES**

ALL OF THE AGENCIES LISTED BELOW MUST SUBMIT A  
LOCALITY

PLAN INDICATING THE AGENCY'S PLAN TO SHARE RESOURCES  
AGENCY JULY '98 TANF/FS CASELOAD

CLARKE 174

BLAND 172

MANASSAS PARK 168

NEW KENT 137

BATH 91

RAPPAHANNOCK 93

CRAIG 86

HIGHLAND 56

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### **PART XII. RETENTION OF RECORDS**

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### **PART XII. RETENTION OF RECORDS**

Generally, program case records are to be retained for three years from the end of the last certification period or case closure. If an investigation of a suspected Intentional Program Violation (IPV) is begun prior to the expiration of the three-year retention period, the applicable



case file(s) must be retained until the issue has been resolved.  
If the investigation results in a determination of fraud and subsequent IPV disqualification, the applicable case file must be retained for the life of the individual or until the agency is notified that the record is no longer needed.  
Records supporting or pertaining to outstanding overpayments must be maintained for three (3) years after the claim has been paid or the claim has been written off and closed administratively.  
In lieu of paper records or data stored in an information system's memory, data may be stored on easily retrievable microfilm, microfiche, or computer tapes. As long as the archived data can be readily retrieved on site, the local agency has met the retention requirement, regardless of when the archiving takes place.  
Each local agency should consult with the Commonwealth's Attorney regarding what constitutes legal evidence prior to microfilming, microficheing or computer taping case file information.

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PART XI. COLLECTION OF OVERPAID BENEFITS

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  - 2. Voluntary Repayment
  - 3. Recoupment/Allotment Reduction
  - 4. Repayment with Food Stamp Coupons
  - 5. Offset (Restoration)
  - 6. Civil Action
  - 7. Set-Off Debt Collection Program
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  - 9. Community Service
- C. Distribution of Payments
- D. Reporting Payments
  - 1. All Programs
  - 2. Food Stamp Claims Tracking System

## **PART XI. COLLECTION OF OVERPAID BENEFITS**

It is considered an overpayment (OP) or overissuance (OI) of benefits when a client has received more benefits than he/she was entitled. The term “overissuance” applies to overpayments in the Food Stamp program.

All overpayments must be established and collected except as directed by program policy.

### **A. CLAIM ESTABLISHMENT**

In cases in which the fraud investigation has substantiated that fraud was committed, it is the responsibility of the fraud investigator to establish a claim and send the appropriate notices for any overpayment/overissuance. Refer to the “Forms Drawer” of the Food Stamp Claims Tracking System to view the request for repayment of extra Food Stamps initial and follow-up letters and the Food Stamp program repayment agreement.

Establishing a claim requires the overpayment or overissuance data being placed in the Fraud FREE Database Tracking System.

### **B. TYPES OF REPAYMENT**

The local agency’s finance or accounting department will be responsible for the collection of all claims following the initial establishment of the claim. The fraud investigator may establish fraud claims. Other agency staff establishes non-fraud claims. The fraud investigator will be responsible for oversight of the collection function. If fraud claims payments have not been received in three consecutive months, the finance or accounting department must notify the fraud investigator.

#### **1. Court-ordered Restitution**

An individual convicted of welfare fraud by a court may be ordered by the court to pay restitution to either the local agency, the court or a probation officer. In the event that restitution is ordered paid to the local agency and the individual does not abide by the court’s order, the local agency should bring the matter to the attention of the Commonwealth’s Attorney (CA). The CA may decide to have the individual brought before the court to show cause why restitution has not been made as ordered. If the individual received a suspended sentence for the crime and one of the conditions of the suspended sentence was to make restitution, the court may revoke the suspended sentence of the individual and remand the individual to jail.

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individual to jail.

#### **2. Voluntary Repayment**

An individual can enter into a voluntary repayment agreement with a local agency. If an individual is currently receiving Food Stamps, the amount of the monthly voluntary repayment cannot be less than the amount that could be recovered through allotment reduction. An individual currently receiving benefits can utilize both the voluntary method of repayment and recoupment or allotment reduction.

#### **3. Recoupment/Allotment Reduction**

Once a debt has been established for a client currently receiving TANF or Food Stamps, the client's grant and/or Food Stamps can be reduced by a percentage, set by program policy, to repay the debt. In TANF this process is known as recoupment; in Food Stamps it is known as allotment reduction. This reduction will remain in effect as long as the case remains active or until the debt is paid in full.

#### **4. Repayment With Food Stamp Coupons**

A client may return actual food stamp coupons as repayment of a claim. This method is only available for repayment of a Food Stamp debt.

#### **5. Offset (Restoration)**

If a food stamp claim is unpaid or if an overissuance and an underissuance of benefits are discovered at the same time, the amount of any overissuance must be offset by the amount of any underissuance, which may have occurred.

#### **6. Civil Action**

If a client has entered into a repayment agreement with the local agency but is no longer making payments, the local agency can take civil action against the client. Civil action should not be initiated if an individual is currently receiving food stamps or TANF.

If civil action is taken, the client will have to appear in civil court. The court will

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determine, based on the evidence presented, if a judgment should be issued against the client. If a judgment is granted the local agency can pursue garnishment of the client's wages or can place a lien on the client's property to recover the debt. Before initiating civil action, the local agency should determine if this method of collection would be cost effective. The local agency should weigh the amount of time that would be spent in court with the balance due on the debt.

#### **7. Set-Off Debt Collection Program**

The Set-Off Debt Collection Program is a collection method of last resort. In inactive cases involving all program areas, a past-due debt for a client must be collected through the Set-Off Debt Collection Program (state tax intercept program), which allows for the debt to be offset by an individual's state income tax refund. Past due is defined as three consecutive months with no payment. An exception would be a past due food stamp debt which is being referred for collection through the Treasury Offset Program. See the Set-Off Debt Collection Program User Guide for additional information.

#### **8. Treasury Offset Program**

The Treasury Offset Program (TOP) is a collection method of last resort. With regard to inactive cases involving past due food stamp debt, the debt must be collected through TOP. TOP allows for the offset of an individual's federal income tax refund and/or any federal benefit payments, such as federal salaries, Social Security and Veteran's benefits.

#### **9. Community Service**

An individual convicted of welfare fraud by a court may be ordered to perform a certain number of hours of community service in lieu of paying restitution.

### **C. DISTRIBUTION OF PAYMENTS**

When overpayments were made in more than one payment category, any cash payments received, including payments received from the Set-Off Debt Collection Program, must be prorated and credited based on the percentage of each program's overpayment to the total overpayment.

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Example: Individual was overpaid \$100.00 in TANF, \$200.00 in food stamps and \$300.00 in Medicaid for a total overpayment of \$600.00. The individual makes a \$100.00 payment. Of this \$100.00 payment, \$50.00 would be credited to Medicaid since that overpayment was 50 percent of the total, \$30.00 would be credited to food stamps and the remaining \$20.00 would be credited to TANF.

Cash payments collected on Medicaid overpayments must be sent by the local agency to DMAS. See PART XIV, Form #37, (Reimbursement for Medicaid Overpayment).

### **D. REPORTING PAYMENTS**

#### **1. All Programs**

All payments, except those received as a result of recoupment, must be entered into ADAPT. Cash payments received on TANF overpayments must also be reported in the LASER system.

#### **2. Food Stamp Claims Tracking System**

All payments received from an individual as payment of a food stamp debt, except for payments received as a result of the Treasury Offset Program and payments received as a result of allotment reduction, must be manually reported to the on-line Food Stamp Claims Tracking System (FSCTS).

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2. Imposition of Penalty
3. Duration of Penalty
4. Reporting

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b. Disqualified Recipient Subsystem

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2. Imposition of Penalty

#### **C. Medicaid**

### **APPENDIX 1 - DISQUALIFIED RECIPIENT REPORT CODES**

## **PART X. DISQUALIFICATION**

Disqualification from receipt of future program benefits is a penalty that must be imposed on an

individual who is found to have committed fraud or an Intentional Program Violation (IPV).

### **A. FOOD STAMPS**

An individual who has been convicted of fraud by a court, or waived his right to an ADH, or been determined to have committed an IPV through an ADH, is ineligible to participate in the Food Stamp Program for a certain period of time. The period of ineligibility depends upon the reason for the fraud and when the fraud occurred. Only the individual, not the entire household, must be disqualified.

#### **1. Period of Ineligibility**

a. If fraudulent statements or misrepresentations of identity or residency were made to receive benefits in more than one household at the same time, the individual is ineligible to receive future benefits for 10 (ten) years.

b. For all other types of fraud, the following applies:

1) If the fraud began and ended prior to October 1, 1996 (the date the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was implemented in Virginia's Food Stamp Program), the individual is ineligible for:

- a) Six months for the first violation
- b) Twelve months for the second violation
- c) Permanently for the third violation

2) If the fraud began and ended on or after October 1, 1996, the individual is ineligible for:

- a) One year for the first violation
- b) Two years for the second violation

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c) Permanently for the third violation.

3) If the fraud time period began prior to October 1, 1996 and ended on or after October 1, 1996, the individual is to be disqualified for:

- a) One year for the first violation
- b) Two years for the second violation
- c) Permanently for the third violation

One or more disqualifications which occurred prior to April 1, 1983, will be considered as only one previous disqualification when determining the appropriate penalty to impose in a case under consideration.

If the client is convicted of fraud by a court and the court orders a disqualification period which is contrary to policy, the local agency must impose the disqualification time period

as ordered by the court.

## **2. Imposition of Penalty**

The disqualification penalty must be imposed immediately. Immediately means the first of the month following:

- a. the date the ADH waiver was signed, or
- b. the date when the individual received written notification of an ADH decision, or
- c. the date the individual was convicted by the court.

Either the investigator or a person designated by the local agency must send the individual the Notification of Disqualification, (See PART XIV, Form #26), which informs the individual that a disqualification penalty will be imposed, identifies the beginning and ending date of the disqualification period and explains the impact the disqualification will have on the eligibility of the remaining household members if the household is currently receiving Food Stamps. The Advanced Notice of Proposed Action must also be sent in accordance with program policy.

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## **3. Duration of Penalty**

Once a disqualification penalty has been imposed, the period of disqualification must continue uninterrupted until completed regardless of the eligibility of the disqualified individual's household. If an individual who is already serving a disqualification period is found guilty of another fraud charge or IPV, the new periods of disqualification will be imposed immediately. In many cases, the new disqualification period will therefore begin before the expiration of the original (or previous) penalty and they will then run concurrently.

Example: Client was convicted of fraud on March 3, 1997. A disqualification penalty of six months was imposed beginning April 1, 1997 and ending September 30, 1997. On June 10, 1997, the client signs a waiver to an ADH for another fraud offense. The disqualification penalty of twelve months is imposed effective July 1, 1997 and runs concurrently with the remaining three months of the first penalty. Barring additional offenses, the disqualification penalty will end effective June 30, 1998.

If the individual reapplies for Food Stamps and there is time remaining in the disqualification period, the agency must disqualify the individual for the remaining time period.

Example: Client is convicted of fraud on March 3, 1998. The client is no longer receiving Food Stamps. The disqualification period is for one year. The disqualification period is effective April 1, 1998 - March 31, 1999. The client reapplies for Food Stamps on June 12, 1998 and is found eligible, but the agency would have to disqualify the client for the remaining nine months of the disqualification period, from July 1, 1998 to March 31, 1999.

If the individual reapplies for Food Stamps and the disqualification time period

has expired, the agency would not impose a disqualification penalty against the client.

Example: Client signs a waiver to an ADH on March 3, 1998. The client is no longer receiving Food Stamps. The disqualification period is for one year. The disqualification period is effective April 1, 1998 - March 31, 1999. The client reapplies for Food Stamps on May 7, 1999. The agency would not impose any disqualification penalty on the client as the disqualification time period had expired.

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#### **4. Reporting**

##### **a. Disqualified Recipient Report**

For each disqualified individual in a case involving over issuance, the investigator or an individual designated by the local agency must complete a Disqualified Recipient Report (DRR). The DRR is completed on-line as part of the Food Stamp Claims Tracking System (FSCTS) when a claim is either established as a fraud claim or changed from a household error claim to a fraud claim. See PART XIV, Form #33, DRR On-Line Screen and DRR On-Line Help Screen.

If there is no over issuance associated with the fraud case, the DRR must be manually completed by the local agency. A blank DRR is located in the Forms Drawer of the FSCTS. See PART XIV, Form #34. APPENDIX 1 contains a list of DRR codes.

Each week, the local agency must send to the Fraud, Special Investigations and Hot Lines Unit all DRRs initially completed that week (adds). The local agency must send either a print of the DRR screen from the FSCTS or a copy of the manually completed DRR. In addition to any new DRR, the local agency must send the fraud unit any changes made to any existing DRR.

##### **b. Disqualified Recipient Subsystem**

Information from the DRR is sent by the Fraud Unit to the Disqualified Recipient Subsystem.

#### **B. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

An individual who has been convicted of fraud by a court; or waived his right to an ADH; or been determined to have committed an IPV through an ADH is ineligible to receive TANF benefits for a certain period of time, depending on the reason for the fraud and when the fraud occurred.

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#### **1. Period of Ineligibility**

a. An individual convicted in state or federal court of fraudulently misrepresenting his address to receive benefits in two or more states is

ineligible to receive TANF benefits for ten (10) years. The ten (10) year period begins on the date the individual is convicted.

b. For all other types of fraud, the individual is ineligible to receive benefits for:

- 1) Six months for the first offense
- 2) Twelve months for the second offense
- 3) Permanently for the third offense

No individual can be disqualified for a fraud or IPV that was committed prior to December 1, 1992 (the date disqualification became effective in the AFDC program in Virginia).

If the client is convicted of fraud by a court and the court orders a disqualification period which is contrary to policy, the local agency must impose the disqualification time period as ordered by the court.

## **2. Imposition of Penalty**

The period of disqualification must begin no later than the second month following:

- a. the date the ADH waiver was received by the local agency, or
- b. the date the ADH decision is issued by the Hearing Officer, or
- c. the date the individual was convicted by the court

The client must be sent the Notification of Disqualification. See PART XIV, Form #26. If the individual is NOT eligible for TANF at the time the disqualification is to begin, the period must be postponed until the individual applies for and is determined eligible for benefits. The disqualification would then be imposed. The disqualification must run uninterrupted until it expires.

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## **C. MEDICAID**

An individual convicted of Medicaid fraud by a court is ineligible for Medicaid benefits for a period of twelve (12) months beginning with the month of conviction. Once imposed, the disqualification must run uninterrupted until it expires. The client must be sent the Notice of Disqualification.

If the case was investigated by DMAS, that agency will send the local DSS agency notification of the conviction advising the local agency to take the appropriate action. See PART XIV, Form #35 (DMAS Fraud Notification to Local Agency.) DMAS will also send the individual convicted of Medicaid fraud a letter informing the individual of the effective date of the disqualification. See PART XIV, Form #36 (DMAS Fraud Notification to Client).

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## **APPENDIX 1**

### **DISQUALIFIED RECIPIENT REPORT CODES**

DRUG TRAFFICKING CONVICTION INVOLVING LESS THAN \$500.00

1st Offense 24 months



2nd Offense 99

ANY TRAFFICKING CONVICTION (including Drugs) INVOLVING \$500.00 OR MORE.

1st Offense 99

FIREARMS TRAFFICKING CONVICTION ANY AMOUNT

1st Offense 99

TRAFFICKING, ADMINISTRATIVE FINDING

1st Offense 12 months

2nd Offense 24 months

3rd Offense 99

DUPLICATE PARTICIPATION

1st Offense 97 (120 months)

2nd Offense 97

3rd Offense 99

APPLICATION FRAUD, INCLUDING NON REPORT OF CHANGES

1st Offense 12 months

2nd Offense 24 months

3rd Offense 99

OTHER IPV

1st Offense 12 months

2nd Offense 24 months

3rd Offense 99

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## **PART IX. JUDICIAL PROCESS**

Definitions for terms used in this Part may be found in PART IX, APPENDIX 1.

### **A. PROSECUTION**

The decision to prosecute a case ultimately lies with the local Commonwealth's Attorney (CA). The referral to the CA for recommended legal action should be in writing. The CA and the local agency should establish specific referral procedures and the format for the written report. If the CA specifies no format, the referral will be made using the Investigative Report of Fraud. See PART XIV, Form #8.

Prior to referring the case for prosecution, if the case involves Food Stamp fraud, the investigator must access the Disqualified Recipient Subsystem (DRS). The investigator must provide information on any prior disqualifications to the CA for use in the sentencing phase of the judicial process.

It is strongly recommended that the CA give a written recommendation for legal action. The Welfare Fraud Preliminary Review Form can be used for this purpose. See PART XIV, Form #30. The written recommendation will serve as verification that the agency pursued the case appropriately as required by federal and state regulation.

If the CA recommends prosecution of the case, he will determine whether to proceed with misdemeanor or felony charges. In Virginia, welfare fraud is a larceny. The crime is grand larceny if the fraud involves \$200.00 or more. It is petit larceny if the fraud involves less than \$200.00. If the crime involved an attempt to defraud and no actual benefits were issued, the client can be charged with a felony for each application in which false information was provided.

The CA will decide how many counts of welfare fraud with which to charge the client. Most welfare fraud cases are prosecuted under §63.1-124 of Code of Virginia, which allows for charges to be drawn for six-month increments.

There are two methods for placing welfare fraud charges against an individual. After the decision has been made as to whether the charges constitute a felony or a misdemeanor offense, and the number of these charges, the individual may be charged by a warrant of arrest or by a direct indictment. The CA will inform the fraud investigator as to which method will be used. Generally, the process used for welfare fraud cases will be the same as that used for other crimes committed in the locality.

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#### **1. Warrant of Arrest**

A warrant of arrest is a written order issued and signed by a magistrate directing law enforcement to arrest the person named in the warrant. The investigator will present facts of the case to a magistrate. If the magistrate determines that there is probable cause that a crime has been committed, he will issue a warrant of arrest. The warrant will be served on the suspect by law enforcement official. The investigator generally does not accompany the law enforcement official when the warrant is served and usually is not notified when the warrant has been served. At the CA's discretion, the investigator may notify the suspect in advance of the warrant being served so the suspect can turn himself in to the magistrate. Any time a warrant will be served on a suspect with minor children, the investigator

should alert the local agency service worker in anticipation that the children may have to be temporarily cared for should the suspect not have anyone at home to care for the children at the time the warrant is served.

When the warrant alleges the fraudulent receipt of less than \$200.00, a misdemeanor, the case will be tried and disposed of in General District Court. When the warrant alleges the fraudulent receipt of \$200.00 or more, the case will be initially scheduled for a Preliminary Hearing in General District Court. (See PART XIV, Form #31, Felony Warrant of Arrest, and Form #32, Misdemeanor Warrant of Arrest).

## **2. Direct Indictment**

A direct indictment is a formal accusation, which is presented by the CA to a Grand Jury. An indictment is one means by which a case is referred to a Grand Jury and is only applicable if the client is charged with felony welfare fraud. The CA is responsible for preparation of the indictment or charge against the client. There may be more than one indictment depending on the number of charges against the client.

With the direct indictment method, the suspect is not arrested until after the case is heard by a Grand Jury and that body returns a “true bill”. A *capias*, an authorization from the judge to arrest an individual, is then issued.

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## **B. BOND**

Once a client has been arrested and brought before a magistrate, the magistrate may require the client to post bond. Bond is a financial assurance that the defendant will appear in court at the appropriate time. It allows the defendant to be released until the court date. Bond may be denied if the defendant is perceived to be a threat to the community.

Generally, an investigator is not asked if bond should or should not be required. The investigator should not discuss bond options with the magistrate unless directed by the CA.

Bond can be paid in the following ways:

### **1. Property Bond**

When a property bond is posted, the defendant, or someone acting on his behalf, offers real property as an assurance that he will appear in court. If the defendant does not appear in court, the locality has a lien on the property in the amount of the bond.

### **2. Cash Bond**

When a cash bond is posted, cash is held to ensure the appearance of the defendant. The defendant may provide the cash himself, or a bail bondsman, for a fee, may assure the court that the money will be paid if the defendant fails to appear.

### **3. Personal Recognizance**

A person may also be released on his own recognizance. No money or property is involved in this type of bond. The defendant swears under oath that he recognizes himself indebted to the locality for the amount of the bond. Only the

magistrate can decide if this method will be used.

If a personal recognizance “bond” is not deemed appropriate and the defendant is unable to post bond, the defendant is held in jail until the court date.

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### **C. COURTROOM PROCEDURES**

A list of legal terms and definitions is provided in PART IX, APPENDIX 1, Legal Terms and Definitions. PART IX, APPENDIX 2, Courtroom Demeanor, provides information on appropriate courtroom demeanor.

#### **1. Preliminary Hearing**

For defendants charged with a felony, the preliminary hearing determines probable cause. The judge will seek to determine that a crime occurred and that it is reasonable to believe the defendant committed the crime. During the preliminary hearing, the prosecution and defense will make a summary presentation to the court, presenting witnesses and evidence as necessary. The investigator may or may not be required to testify.

Both sides of the case are presented and the judge will determine if probable cause exists. If the judge determines that probable cause does exist, the defendant will be certified to the Grand Jury. The judge may also set a date for trial in Circuit Court; in the event the defendant is indicted by the Grand Jury. The judge will also determine if bond should or should not be continued.

#### **2. Grand Jury**

The purpose of the Grand Jury is to return or not return “true bills” of indictment on all cases brought before it by the Commonwealth’s Attorney. The “true bill” is the means by which cases are referred to the Circuit Court.

For each term of the Circuit Court, a Grand Jury of citizens is appointed. This group must be available for the entire Circuit Court term but generally meets for only one day per term. The Circuit Court judge swears in the Grand Jury and the court appoints one member to be the foreman. The CA serves as legal consultant to the Grand Jury but does not directly participate in the proceedings. The proceedings are conducted with only the jury members and witnesses present. The purpose of the Grand Jury is not to determine a defendant’s guilt or innocence, but rather to determine if there is enough evidence against the defendant to warrant a trial on the charges. The Grand Jury proceedings are as a result one-sided. The defendant does not appear. Hearsay is permissible and, in welfare fraud cases, only one witness, the investigator, is called. No evidence is presented for the defense.

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The Grand Jury must determine from the testimony whether or not there is sufficient evidence to warrant a trial. If the jurors’ feel they would convict the defendant, they return a “true bill” and the defendant will be scheduled for trial in Circuit Court. If the jurors feel they would not convict, they return a “not true

bill” and the matter is ended. The decision need not be unanimous and agreement by a majority of the members is sufficient.

In brief, the investigator’s experience as a Grand Jury witness will be as follows: The investigator will receive a subpoena advising when and where the Grand Jury will meet. On that day the investigator will go to the designated courtroom. The jury will be called, a foreman appointed and all sworn in. The judge will explain the proceedings and the Grand Jury will retire to the jury room. The proceedings are secret. The actual indictments are prepared in advance by the CA. The investigator will be given the indictment to proofread. There will be a list of the order in which the witnesses will testify. When it is the investigator’s turn to testify, the investigator will be given the indictment. Either the investigator or the foreman of the Grand Jury will read the indictment. The investigator will present the facts on which the prosecution is based. The investigator should be brief. Members of the Grand Jury may ask questions. When they are satisfied, the investigator is excused. Afterwards the Grand Jury members will vote as to whether enough evidence to return a “true bill” and advise the court of their decision.

Grand Jury proceedings are short, simple and informal. The investigator’s role as a witness is important but requires only knowledge of the facts of the case.

### **3. General District Court**

General District Court is a summary proceeding. Juries are not used. The judge hears all cases. It is a court “not of record” meaning that transcripts of testimony are not kept. Misdemeanor charges begin and end in this court. Preliminary Hearings for felony charges are held in this court.

#### **a. Misdemeanors**

If arrested on a misdemeanor charge, the defendant appears in court on the designated date. The defendant may request time to obtain a lawyer or request that one be appointed. If time is requested to obtain a lawyer, a future date will be set for the defendant to report his progress. If the defendant has counsel on the court date, the case may be heard at that

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time, but generally a future date is set for trial. On the trial date the investigator and other witnesses should be present for court.

When the case is called, the defendant must approach the bench. The judge will ask the defendant if he has retained counsel or if he intends to do so. If the defendant has counsel, or chooses to represent himself, the hearing will continue. The prosecution presents its version of the case. The defense then presents its version and asks questions. The judge determines guilt or innocence and pronounces sentence.

#### **b. Felonies**

A defendant arrested on a felony charge appears in court the morning following the arrest. At that time he is afforded an opportunity to obtain counsel and in some cases a date is set for the Preliminary Hearing. The investigator’s presence in court is usually not required.

In some situations, the defendant may plea-bargain and plead guilty to the crime in exchange for a reduction of the felony charge to a misdemeanor. In those situations, the case is presented in General District Court and the procedures outlined above for misdemeanors are applicable. If the case is not plea-bargained, the case will be bound over to the Circuit Court following the Preliminary Hearing.

#### **4. Circuit Court**

Felony cases are actually tried in Circuit Court. Circuit Court is a court of record; a stenographer or court reporter will record all statements made during the course of the trial. This transcript then becomes part of the court record. The investigator and all other witnesses who are subpoenaed must appear in court to give their testimony. If it is to be a jury trial, the jury will be sworn in and seated. When the case is called, the defendant and his counsel seat themselves at the defense table. The defendant is asked to rise. The indictment is read and the defendant is asked how he wishes to plead. The judge will then ask the defendant a series of questions designed to assure that no rights have been violated, including whether he understands the charges against him and the consequences and whether he had the opportunity to summon witnesses. If the defendant pleads guilty, the judge will advise him that by doing so he has given up his right to a trial by jury. He will also be asked if he has been promised anything in exchange for his plea. When the judge is satisfied that the defendant understands what has

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occurred and has not been deprived of his rights, the court accepts the plea. If a plea bargain agreement is reached, the defense may waive the presentation of the evidence and the CA will read a disposition of the facts of the case and make a recommendation for sentencing.

If the evidence is not waived, or the defendant does not reach a plea bargain, the case will be heard. The case begins with opening arguments by the defense and the prosecution. Witnesses are then called, sworn in and may be required to retire to the witness room. The prosecution's case is presented first. Prior to presenting the case, the defense may make motions regarding the case, which may be decided by the judge at that time or deferred until later. When both sides have had an opportunity to present witnesses and evidence, each side is given the opportunity to make closing arguments. At this point the judge or jury decides guilt or innocence based on the facts presented during the trial.

If the defendant is found guilty, or pleads guilty, a date is generally set for sentencing. However, the judge may pronounce sentence on the date of conviction. The future date for sentencing is to allow time for the probation department to conduct a background investigation of the defendant and to file a pre-sentence report with the court. The judge will also decide if bond is to be continued.

On the sentencing date, the probation officer will present his report to the court. The judge or either attorney may then question the defendant. Other witnesses may also be called. The purpose of this procedure is to assist the court in

deciding what the sentence should be. Both sides present arguments in closing. The judge completes the court process at this point by pronouncing sentence. The investigator should be present at the sentencing.

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## **APPENDIX 1**

### **LEGAL TERMS AND DEFINITIONS**

**ACQUITTAL.** The legal and formal certification of the innocence of a person who has been

charged with a crime.

**AFFIDAVIT.** A signed statement of facts sworn to be true by the person making the statement.

**APPEAL.** A legal proceeding by which a case is brought from a lower court to a higher court to

have a case reheard.

**ARRAIGN.** To bring a prisoner to the court to answer the matter charged upon him by the

indictment. The arraignment of a prisoner consists of calling upon him by name, and reading to

him the indictment, and demanding of him whether he plead guilty or not guilty, and entering his

plea.

**ATTACHMENT.** A writ issued by a court of record, commanding the sheriff to bring before it a

person who has been guilty of contempt of court. A legal proceeding accompanying an action in

court by which a plaintiff may require a lien on a defendant's property as security for the payment of a judgment.

**ATTORNEY GENERAL.** The chief legal officer for the Commonwealth. The Attorney General

gives advice and renders official advisory opinions in writing. In all criminal cases before the

Supreme Court in which the Commonwealth is a party, the Attorney General shall appear and

represent the Commonwealth.

**BENCH WARRANT.** A written order issued by the Court, or "from the bench" by the Judge,

for the arrest of a person for trial on a charge, not included in the indictment by the Grand Jury,

in a case of contempt, or to bring a witness in who does not obey a subpoena.

**BEYOND A REASONABLE DOUBT.** The standard by which the facts must be proven to

establish guilt.

**BOND.** An obligation made binding by a money forfeit; also the amount of the money guaranteed.

**BUSINESS RECORD.** A record of an act, condition or event which shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information,

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method, and time of preparation were such as to justify its admission.

**BURDEN OF PROOF.** In criminal cases the state must bear the heavy burden of proving the

guilt of the accused beyond a reasonable doubt.

**CAPIAS.** The general name for several species of writs, the common characteristic of which is

that they require the officer to take the body of the defendant into custody; they are writs of

attachment or arrest. Latin for "That you take." In English practice, the process on an indictment when the person charged is not in custody.

**CHARGE.** (1) To accuse. (2) Instruction of a Judge to a jury on matter of law.

**CIRCUIT COURT.** A court of record having appellate jurisdiction for appeals from the General

District Courts and the Juvenile and Domestic Relations District courts in both civil and criminal

matters; hears all felony cases as presented to the Commonwealth's Attorney.

**COMMONWEALTH'S ATTORNEY.** The chief county/city prosecuting officer.

**CONCEALMENT.** A withholding of something which one knows and which one, in duty, is

bound to reveal. A concealment is fraudulent when made with knowledge of the facts and with

intent to deceive.

**CONFESSION.** A voluntary statement made by a person charged with the commission of a

crime wherein he acknowledges himself to be guilty of the offense charged. Before a criminal

defendant's statements may be used as evidence against him, it must be shown that the statements were voluntarily made, and not the result of force or fear.

**DEFENDANT.** The party against whom relief or recovery is sought; the party summoned to

answer a charge or complaint.

**DISMISS.** To dismiss an action or a suit is to send it out of court without a trial.

**DISPOSITION.** The act of disposing. How the case is terminated.

**DURESS.** A threat of physical or emotional injury or a threat of imprisonment. Use of duress is



specifically excluded by regulation from welfare investigations.

**EVIDENCE.** Evidence is defined as all means by which an alleged matter of facts is established

or disproved. Proof is the perfection of evidence; for without evidence, there is no proof.

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**FALSE REPRESENTATION.** Generally, the necessary elements upon which to base an action

in fraud or deceit for false representation are that the representation are that the representation of

a material fact was made; that such representation of a material fact was false and known to be

false by the party making it; and was made with intent to deceive; and that the party to whom it

was made had a right to rely upon it to his injury or damage.

**FELONY.** An offense punishable by confinement in a penitentiary. In welfare fraud, an offense

which involves fraudulent receipt of aid in excess of \$200.00.

**FORGERY.** The false writing or alteration of an instrument with the fraudulent intent of deceiving and injuring another person or entity. Always a felony.

**FRAUD.** A false representation of a matter of fact, whether by words or by conduct, by false or

misleading allegations, or by concealment of that which should have been disclosed, which

deceives and is intended to deceive another so that he shall act upon it to his legal injury.

**GENERAL DISTRICT COURT.** Has jurisdiction over misdemeanors committed by persons 18

years of age or older.

**GRAND JURY.** A panel of seven individuals whose duty is to receive complaints and accusations in criminal cases and hear the evidence on the part of the State. The Grand Jury

decides if there is "Probable Cause" and returns a "true bill of indictment" if there is, and "no

true bill" if there is not. The Grand Jury does not decide guilt or innocence.

**HEARSAY.** Evidence not proceeding from the personal knowledge of the witness, but from the

mere repetition of what he has heard others say. Literally it is what the witness says he heard

another person say. Generally, such hearsay statements are inadmissible in evidence and are not

the best evidence.

**INDICTMENT.** A formal accusation forwarded to the Court by a Grand Jury.

**INTENT.** Generally speaking, a fraudulent intent is an essential element of actual fraud.

The

rule has been handed down that a representation, even though knowledgeably false, does

not

constitute grounds for an action of deceit unless it was made with the intent to be communicated

to the person, or to a class of persons, who act upon it to their prejudice.

**JUDGE.** A public official who hears and decides cases brought before a court of law for the

purpose of administering justice.

**JUDGMENT.** The decision, pronouncement, or sentence rendered by a court upon an issue in

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which it has jurisdiction.

**JUDICIAL DISCRETION.** The freedom of the judge to apply rules and principles of law and to

recognize such facts as are pertinent to the cause in coming to a decision on the case.

**JUVENILE DOMESTIC RELATIONS COURT.** This Court has exclusive jurisdiction over

matters involving children, handles misdemeanors and most felonies that deal with children

under 17 years of age.

**LARCENY.** Felonious stealing. Fraudulent taking and carrying away of a thing without claim of right.

**MAGISTRATE.** A public officer having power to issue a warrant for the arrest of a person

charged with a public offense, or for the search of a place or a person.

**MISDEMEANOR.** Offense lower than a felony, a larceny of less than \$200.00.

**MIRANDA WARNINGS.** Prior to any custodial interrogation, that is, questioning initiated by

law enforcement officers after a person is taken into custody or otherwise deprived of his freedom in any significant way, the person must be warned:

1. that he has right to remain silent;
2. that any statement he does make may be used as evidence against him;
3. that he has a right to the presence of an attorney;
4. that if he cannot afford an attorney, one will be appointed for him

prior to any questioning if he so desires.

Unless and until these warnings, or a waiver of these rights, are demonstrated at the trial, no

evidence obtained in the interrogation may be used against the accused.

**MOTION.** A request made to a court or judge to obtain an order or ruling. A motion can be

written or oral.

**NOLLE PROSEQUI.** A discharge of indictment or warrant upon request of the prosecutor. It is

not an acquittal or pardon. The defendant may be retried. The prosecutor simply chooses

to take  
no further legal action at the time.

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OBJECT. To oppose by arguing against introduction of some evidence in a trial.

ORDER. Every direction of a Judge, or court order, made or entered in writing; a mandatory act.

OVERRULE. To rule against the objection of the introduction of particular evidence.

PERJURY. False swearing upon an oath properly administered.

PETITION. A request made to a court or judge, always in writing.

PLAINTIFF. A person who brings an action; the party who complains.

PLEA AGREEMENT MEMORANDUM. The defendant, Commonwealth's Attorney,  
and

Defense Attorney all agree in writing to accept a guilty plea by the defendant. A guilty  
plea

could be to a lesser offense, or the same offense charged with a lighter sentence and often  
results

from plea-bargaining. The plea agreement is not binding on the Judge who does not have  
to

accept it.

PRELIMINARY HEARING. A hearing in General District Court where the Judge  
decides

whether there is probable cause that the person committed a crime accused.

PRE-SENTENCE REPORT. A summary of the defendant's background, completed by a  
Probation Officer, which is used by the Judge in deciding a sentence that is appropriate.

*PRIMA FACIE*. "At first view." *Prima facie* evidence is evidence that stands as it appears  
until

contrary evidence is produced.

*PRIMA FACIE* CASE. A case which is proceeded upon sufficient proof to that stage  
where it

will support a finding if evidence to the contrary is disregarded.

*PRIMA FACIE* EVIDENCE. Evidence good and sufficient on its face; such evidence as,  
in the

judgement of the law, is sufficient to establish a given fact, or the group or chain of facts  
constituting the party's claim or defense, and which if not rebutted or contradicted, will  
remain

sufficient.

PROBABLE CAUSE. Reasonable grounds for belief that an accused person is guilty as  
charged.

RESTITUTION. The act of restoring; restoration of anything to its rightful owner; the act  
of

making good or giving equivalent for any loss, damage or injury.

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**RULE.** To command or require. To settle or decide a point of law arising upon a trial.

When it

is said of a Judge presiding at a trial that he “ruled,” it is meant that he lay down, settled, or

decided an issue.

**SEARCH WARRANT.** A written order signed by a magistrate, directed to a peace officer,

commanding him to search for property and bring that property to the magistrate.

**SENTENCE.** The judgement formally pronounced by the court upon the defendant after his

conviction in a criminal prosecution.

**STATUTE.** A law passed by the legislative body of a governing unit.

**STIPULATION.** The agreement between attorneys on opposite sides in a case to admit certain

facts or dispositions as evidence.

**SUBPOENA.** A writ to cause a witness to appear and give testimony before a named court, on a

given date.

**SUBPOENA DUCES TECUM.** A writ requires an official to provide specific records to the

court.

**SUMMONS.** A notice to a defendant that an action against him has been commenced and that

judgment will be taken against him if he fails to answer the complaint.

**SUSTAIN.** To carry on; to allow or admit as valid.

**TESTIMONY.** Evidence given by a witness under oath or affirmation.

**TRIAL.** The formal examination and decision of a case by a court of law.

**TRUE BILL.** In a criminal case, the endorsement made by a Grand Jury on a bill of indictment

when they are satisfied that the accusation is supported by the evidence and that it is true.

**UTTER.** To offer, whether accepted or not, a forged instrument, with the representation by

words or by actions, that the same is genuine. Uttering consists in presenting for payment although no money may be obtained. The uttering of a forged document is always a felony.

**VERDICT.** The formal and unanimous decision or finding made by a jury, impaneled and sworn

for the trial of a case, and reported to the court (and accepted by it), upon the matters or questions duly submitted to them upon the trial. Until accepted by the court, a finding of the jury

is not “a verdict”.

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**WAIVER.** A voluntary release of a legally enforceable right.

WARRANT OF ARREST. A written order issued and signed by a magistrate directing a police officer to arrest the person named in the warrant and accused of committing an offense. WRIT. A precept in writing, couched in the form of a letter, addressed to a sheriff or other officer of the law, or directly to the person whose action the court desires to command, and requiring the performance of a specified act, or giving authority and commission to have it done.

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## **APPENDIX 2**

### **COURTROOM DEMEANOR**

#### **1. Appearance**

Dress neatly in normal business attire, but do not overdress. It is to the witness advantage to dress neatly and conduct one's self in a professional and courteous manner. In the courtroom, the first impression of the Judge and jury will be a visual one. The investigator and other witnesses must maintain a professional appearance at all times.

#### **2. Preparation**

If the witness has received a subpoena, the witness should take it with him to court. It may prove useful, for example, if the witness is not sure in which courtroom the trial is being held.

When the witness arrives outside the courtroom, if the witness does not know the attorney who has subpoenaed him, the witness should ask for the attorney and introduce himself. If the witness has not previously discussed the case with the attorney, the attorney will probably want to discuss the witness testimony. If the witness is producing records, the records should not be turned over to the attorney unless the Judge orders the witness to do so, or unless the witness has been told otherwise by the Commonwealth's Attorney.

If the witness is going to testify concerning records, he should become familiar with them. The witness should be able to refer to the records easily if he must do so while he is on the witness stand.

If the witness is going to testify about some event that happened months, even years before, the witness should try to refresh his recollection. The witness testimony must state what he recalls.

#### **3. Behavior**

The witness must avoid any undignified behavior such as loud laughter from the moment the he enters the courtroom. Smoking and gum chewing are not permitted in the courtroom but may be permitted in the corridors.

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#### **4. Testifying**

BE ATTENTIVE. You should remain alert at all times so that you can hear and understand and give the proper response to each question. If the Judge or jury get the impression that you are bored or indifferent, they may tend to disregard your story. THINK BEFORE YOU SPEAK. Make sure you understand each question, then give an accurate answer to the best of your ability. Hasty and thoughtless answers may be incorrect and cause problems for all concerned. If you don't know the answer to a question, say so. It is the duty of the attorney to make a question understandable. SPEAK CLEARLY. There is nothing more annoying to a court than a witness that refuses to speak clearly enough to be heard and understood. An inaudible voice detracts from your testimony and makes the court think that you are not certain of what you are saying.

IF YOU DON'T UNDERSTAND A QUESTION, ASK FOR CLARIFICATION. If you try to answer a question without full understanding, your answer may confuse the court, the jury and the lawyers.

BE FAIR. Justice will be served only if you make your testimony as objective as possible.

NEVER LOSE YOUR TEMPER. When the witness loses his temper, he has placed himself at the mercy of the cross-examiner. Courts are interested only in the facts of the case. Hold your temper and your testimony will be much more valuable.

DON'T BLUFF. If you are not prepared to answer a particular question, be honest enough to say so. A bluffer is easily detected and then a cloud is cast over your entire testimony. Be willing to say I don't know.

BE CONCISE. Be brief and to the point in your testimony. After you have made your point STOP TALKING. Don't get lost in unimportant detail.

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## **PART VIII. ADMINISTRATIVE DISQUALIFICATION HEARING PROCESS**

### **A. Definition**

### **B. Criteria For Use**

### **C. Procedures**

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## **PART VIII. ADMINISTRATIVE DISQUALIFICATION HEARING PROCESS**

### **A. DEFINITION**

The Administrative Disqualification Hearing (ADH) is a process to dispose of a case in which, after investigation, there is clear and convincing evidence to substantiate that an Intentional Program Violation (IPV) (fraud) has occurred. It is an impartial review by a State Hearing Officer of an individual's action(s) involving an alleged IPV for the purpose of determining if the individual did or did not commit an IPV.

### **B. CRITERIA FOR USE**

The ADH process must be used in the following circumstances:

1. The case does not meet the criteria for prosecution as established by the

Commonwealth's Attorney (CA); or

2. The CA declines to prosecute the case for a reason other than no intent.

### **C. PROCEDURES**

1. The investigator must access the Disqualified Recipient Subsystem (DRS), a national database of disqualified Food Stamp recipients, prior to the initiation of the Administrative Disqualification Hearing process to determine if the individual is known to the DRS so that the appropriate disqualification penalty can be imposed (See PART IX, Page 1). The DRS is accessed by telephone using a Voice Response Unit (VRU). Access to DRS will provide the investigator with information on any prior disqualification imposed on an individual as a result of a criminal conviction, or the ADH process or a signed waiver.

Example: If the DRS shows that the client has a previous disqualification in North Carolina and the client has committed fraud in Virginia, this would be the second offense for the client.

Only individuals authorized by the VDSS Fraud Unit can access the DRS. Any information obtained from the DRS must be verified in writing by the local agency prior to taking any disqualification action against the client.

2. To initiate the ADH process, the investigator must mail or hand-deliver to the individual accused a Notice of Intentional Program Violation (See PART XIV, VIRGINIA DEPARTMENT

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Form #9) along with a Waiver of the Administrative Disqualification Hearing (See PART XIV, Form #10). (These forms are available through DSSP or the Internet via the Department of Social Services web site). If the individual is accused of committing an IPV in the Food Stamps Program, the pamphlet, "Administrative Disqualification Hearings" must accompany the above notices. If the individual wishes to waive his right to an ADH, a signed waiver must be returned to the local agency within ten (10) days.

3. If a signed waiver is received, the local agency must impose the appropriate disqualification penalty on the individual. The local agency must send the individual a Notice of Disqualification for Intentional Program Violation. (See PART XIV, Form #26)

4. If a signed waiver is not received, the case must be referred for an ADH. The investigator must complete and send a Referral for Administrative Disqualification Hearing to the Chief Hearing Officer at Central Office. (See PART XIV, Form #27)

5. The Chief Hearing Officer assigns a Hearing Officer to the case. The Hearing Officer sends the individual an Advance Notice of Administrative Disqualification Hearing, setting the date, time and location of the ADH, and allowing at least 30 days notice. (See PART XIV, Form #28)

6. If the individual does not appear for the ADH, the ADH can still be held as long as there is no evidence that the advance notice of the hearing was undeliverable.

7. After all evidence is presented at the ADH, the Hearing Officer renders a decision in writing. The Hearing Officer notifies the individual and the local agency by sending an Administrative Disqualification Hearing Decision notification (See

PART XIV, Form #29). If the individual is determined to have committed an IPV, the local agency must impose the appropriate disqualification penalty and send the Notice of Disqualification for Intentional Program Violation.

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## **APPENDIX 1 - INTERVIEW/INTERROGATION CHECKLIST**

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## **PART VII. INTERVIEWS AND INTERROGATIONS**

### **A. INTERVIEWING**

An interview is a conversation with a clearly defined purpose. In a welfare fraud investigation the purpose of the interview is to gather facts that will assist the investigator in concluding the investigation. Interviews may be conducted with local agency workers as well as individuals in the community such as employers, landlords or bank personnel.

#### **1. Setting**

A successful interview depends on the setting for the interview. Privacy is essential. The ideal setting or site is the investigator's office. Usually, interviews conducted in the client's home are less in the investigator's control and are subject to distractions and interruptions. Sometimes, however, an increased comfort level may offset the drawbacks of the home interview for the client who as a result may be more forthcoming with information.

#### **2. Tone/Demeanor**

The tone of the interview is very important to achieving the desired results. Each interview should be conducted in a professional, business-like manner and follow a prepared plan of action. The investigator should introduce ones self, explain a little about one's job function and the purpose of the interview. The time spent establishing rapport with a witness can result in increased cooperation and help reduce anxiety or hostility.

### **B. INTERROGATION**

An interrogation is a type of interview, which has as its goal an admission of guilt by the individual(s) suspected of committing a crime. It is generally conducted at the end of an



investigation once the investigator has evidence to prove that the suspect committed fraud. The desired outcome of the interrogation is to obtain information concerning the innocence or guilt of the suspect. The investigator should strive to obtain an admission of guilt or a confession as appropriate.

Unless directed otherwise by the Commonwealth's Attorney (CA), the investigator must attempt to interview/interrogate the individual(s) suspected of committing the crime of welfare fraud prior to referring the case for prosecution.

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### **1. Setting**

It is important to conduct an interrogation in a quiet, private area. The room should be free of distractions, such as pictures and personal articles, as it is critical that there be no interruptions. The subject should receive the investigator's full and undivided attention. The investigator should not answer the telephone during this time.

### **2. Establishing Identity**

The investigator needs to positively establish the subject's identity prior to beginning the interrogation.

### **3. Tone/Demeanor**

During the interrogation, the individual should be treated with dignity, decency and respect. The attitude and conduct of the investigator towards the individual is of utmost importance.

### **4. Miranda**

In 1966, the United States Supreme Court, in the landmark case of *Miranda vs. Arizona*, held that whenever a person is about to be interrogated by a law enforcement officer and "has been taken into custody or otherwise deprived of his freedom of action in any significant way" certain warnings must be given. These warnings include, among others, the right to remain silent and the right to have an attorney present during questioning. Without this advisement of rights, any statements made by the subject could be suppressed and held inadmissible by the court.

The investigator must consult with the CA to determine if the CA wants the investigator to advise the suspect of his Miranda rights. Additionally, the CA should approve the Miranda Advise of Rights form content prior to implementation.

Even though the investigator does not have the power to arrest the suspect and thereby cannot legally detain the suspect, the suspect may feel that he is in custody and not free to leave. Whether or not the investigator reads Miranda, it is important to explain to the subject that he does not have to make any statements and that he is free to leave and terminate the interview at any time.

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If the investigator is instructed by the CA to read Miranda, it is best to read the

Miranda rights verbatim rather than relying on memory. The investigator must make sure the suspect waives his right to remain silent and to have an attorney present before continuing the interrogation. A statement or confession is not admissible into evidence unless the statement is given voluntarily, without promises, intimidation or duress. See PART XIV, Form #25 (Virginia State Police Advice of Rights.)

### **5. Note Taking/Tape Recording**

During the suspect's interrogation, the investigator should keep note taking to a minimum. It is recommended that the interview notes be compiled into an interview narrative as soon as possible after the interview.

The interrogation can also be tape-recorded. It is permissible to record the interrogation with a suspect, either with or without his knowledge. As long as one party to the conversation consents to the recording (the investigator), there is nothing improper about this practice. Recording a suspect's statement is an excellent way to ensure the accuracy of the statements when presented at trial. As certain evidentiary criteria must be met before the recorded statements can be introduced as evidence in court, the investigator must consult with the CA before utilizing this process.

### **6. Taking a Statement**

If the suspect is willing to make a statement, it is recommended that the suspect make the statement in writing.

See APPENDIX 1, Interview/Interrogation Checklist, for specific questions to use in the interview or interrogation.

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## **APPENDIX 1**

### **INTERVIEW AND INTERROGATION CHECKLIST**

\_\_\_\_ 1. Ask the client for identification.

\_\_\_\_ 2. Have the suspect identify any evidence that bears his signature or other identifying information, including, but not limited to, the following:

(a) Signature and answers to pertinent questions on applications and forms, paying particular attention to the section regarding reporting responsibilities, and any specific Rights and Responsibilities forms completed by the client.

(b) Signature on benefit checks and/or Authorization to Participate (ATP) cards. If the benefits checks and/or ATPs are not available, show the client the payment history from VACIS or ADAPT and have him acknowledge, in writing, receipt of the benefits.

(c) Payroll records; ask the suspect if the wage information appears to be correct.

\_\_\_\_ 3. Ask the following questions:

(a) Did you know you were supposed to report the change?

The answer to this question will help the investigator determine the client's understanding of his reporting responsibilities.

If the client says no, be prepared to call to the client's attention any other changes he reported in the past, specifically any related changes, and ask him to explain why he did not know he was supposed to report this time.

For example, if the client failed to report employment, check the case record(s) to determine if he had ever worked before and made a timely report of that job.

If the client has not reported a similar situation in the past, direct the client to the appropriate places on any previous applications signed by the client, especially the application signed just prior to the unreported change. Direct the client also to any agency responsibility forms the client may have signed. Inform the client that by signing these forms, he acknowledged understanding his reporting responsibilities.

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(b) Why did you not report the change? (Or, Why did you do it?)

The answer to this question may help the investigator prove intent, and may give the investigator an idea as to what the client's defense will be.

If the client states the change was reported, ask the client to whom, when and how the change was reported. If the client did report the change, the client should remember something regarding the circumstances. If the client cannot provide a name of the individual to whom the change was reported, have the client physically describe the individual. If the worker the client describes is no longer employed by the local agency, do not give the client that information.

The investigator is responsible for re-verifying any information the client may provide which is contrary to what the investigator has previously verified.

For example, most local agencies keep a daily log of clients visiting the office. If the client states he came into the office on January 12<sup>th</sup> to report the change, but cannot remember the name of the worker to whom he reported the change, the investigator should check the receptionist's log to confirm the client was in the agency on that date and to determine if he was seen by a worker or simply provided to the receptionist.

\_\_\_\_4. If the case meets the criteria for referral to the Commonwealth's Attorney (CA), explain to the suspect that the case will be referred and that the CA makes the final decision on whether to prosecute or not. The investigator must not give any guarantees or make any promises. At the CA's discretion, the investigator can inform the individual of the CA's decision.

\_\_\_\_5. The investigator should not ask for restitution on a case that will be referred for prosecution unless authorized by the Commonwealth's Attorney. The investigator should explain to the individual the difference between the crime and the debt owed. The crime is the lie or failure to report and cannot be changed or undone by repayment. Guilt is determined by the court based on the facts of the case. The debt is the amount overpaid as a result of the crime.

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PART VI. INTENT

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## **PART VI. INTENT**

An understanding of the concept of intent is crucial to the fraud investigation. Intent can be said

to exist only when the act committed was deliberate or willful. Without intent, there is no fraud.

Four issues must be considered in deciding if intent exists:

**A.** Was the act (providing false information, withholding information, failure to timely report) deliberate or willful? Was it committed with knowledge of its falsity?

The fact that a client does not report a change timely is not, in and of itself, fraud. The investigator must determine if the failure to report the change in a timely manner was a deliberate act.

The investigator must distinguish between an unintentional act, or misunderstanding, and intent to commit fraud. Sometimes the client may not be sure of how to answer a particular question or the client may not be sure of the correct information and lists the information to the best of his knowledge. In other situations, the client may not provide correct information for fear of moral judgment by the program worker. In other cases, the client may be embarrassed by having to apply for public assistance.

Example: Client applies for Food Stamps and does not declare ownership of an Individual Retirement Account (IRA) on the application. However, the agency, through effective interviewing, determines the client has an IRA. The client states he did not list the IRA because he does not have access to the money without a penalty and he does not plan to withdraw any of the funds. Because he does not consider the IRA a resource to him, he did not think to declare it on the application. No fraud was committed in this case, since there was no intent.

**B.** Did the client have knowledge of the correct information?

Example: Client and her sister receive Food Stamps together. The client is the case name. The client's sister gets a part-time job. In order to prove intent on the client's part, the investigator must prove that the client had knowledge of her sister's job AND deliberately withheld that information from the agency. If the investigator cannot prove the client knew her sister was working and the client does not admit to knowing her sister was employed, the investigator cannot determine that the client intended to withhold the information.

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**C.** What was the client told regarding his reporting responsibilities?

Short of an admission by the client, it will be difficult for the investigator to determine if the client actually understood his reporting responsibilities. However, the investigator can determine when and how often agency personnel told the client about his reporting responsibilities and, therefore, whether he reasonably should have understood them.

First, determine how long the client has received public assistance. This is important because at each review or recertification, the agency program worker should have explained to the client his reporting responsibilities. The investigator should particularly focus on the application, review, recertification or statement of facts signed by the client

just prior to the beginning of the fraud period.

Example: The client was recertified on January 10 and the worker explained to the client his reporting responsibilities on that date. The client then went to work on January 20 and did not report the change. Because the client's reporting responsibilities had just been explained, it becomes less believable if the client says that he did not know he had to report.

In addition to a signed application or statement of facts, the client may have signed and received a Rights and Responsibilities form acknowledging that his reporting responsibilities had been explained. These agency forms are very specific to the types of changes that need to be reported.

The investigator would have already determined from the case file the client's reporting pattern. Had the client reported changes in the past? Did the reported changes include those that negatively as well as positively impacted eligibility? The investigator should specifically check to see if the client had reported a situation similar to the one being investigated. For example, if the client had reported employment in the past and the current investigation relates to unreported earnings, the investigator can ask the client why he didn't report this job when he had reported a previous job.

**D.** What would the impact on the client's eligibility have been if the change had been reported?

Example: Client applies for Food Stamps and does not declare ownership of a vehicle. The agency determines the client owns a 1984 Ford Escort by checking the DMV system. The agency further determines that ownership of this vehicle does not negatively affect the client's eligibility; the client is still eligible for Food Stamps. When the client is questioned as to why she did not declare the

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vehicle on her application, the client states that the car is not in working order, she cannot afford to fix the car and consequently she did not renew the license tags for the car. Even though the client did not declare ownership of the vehicle on the application, declaring it would have made no difference in the client's eligibility. The client's explanation is reasonable. There was no intent to defraud.

Virginia Department of Forms

Social Services Fraud Reduction and Elimination Effort (FREE)

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Part XIV, Forms, is under construction. Please refer to the forms page on the Fraud web site. Any problems or questions, contact Susan Lloyd at

[susan.lloyd@dss.virginia.gov](mailto:susan.lloyd@dss.virginia.gov).

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## **PART XV. ELECTRONIC BENEFIT TRANSFER (EBT)**

### **Acronyms**

Acronym

Description

ADH

Administrative Disqualification Hearing

ALERT

Antifraud Locator of EBT Retailer Transactions

BRU Benefit Redemption Unit

CB FNS Compliance Branch

EBT Electronic Benefit Transfer

FNS Food and Nutrition Services

LDSS Local Department of Social Services

OIG USDA, Office of Inspector General

PIN Personal Identification Number

POS

Point of Sale Device

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## **A. DESCRIPTION OF ELECTRONIC BENEFIT TRANSFER**

EBT is an electronic system that allows a client to authorize transfer of government

benefits from: 1) a federal account to a retailer account to pay for products purchased under the Food Stamp Program or, 2) a state account directly to the client for receipt of state-administered benefit programs.

Within the Food Stamp Program, food stamp applicants apply for their benefits in the usual way, by filling out a form at their local department of social services. Once eligibility and level of benefits have been determined, an account is established in the individual's name, and food stamp benefits are deposited electronically in the account each month. A plastic card, similar to a bankcard, is issued and a personal identification number (PIN) is assigned or chosen by the individual to get access to the account.

When paying for groceries, the individual's card is run through an electronic reader of a point-of-sale (POS) terminal, and the client enters the secret PIN number to access the food stamp account. Electronically, the processor verifies the PIN and the account balance, and sends the authorization or denial back to the retailer. The client's account is debited for the amount of the purchase, and the retailer's account is credited. Neither money nor food stamp coupons is exchanged.

#### **B. TYPICAL FRAUDULENT FOOD STAMP EBT TRANSACTIONS**

One of the most common forms of food stamp fraud, known as food stamp trafficking, involves the illegal buying or selling of food stamp benefits for cash, drugs, weapons or other items of value. There are two scenarios generally used in the commission of Food Stamp trafficking. One scenario involves a transaction between the client and the retailer. The client, in collusion with the retailer, debits his account for a specified amount of money, which is credited to the retailer's account. The retailer then hands the client cash in an amount less than the EBT transaction, generally equal to 50 percent of the transaction. No merchandise is sold.

The other scenario is the exchange of the client's EBT card and PIN number for cash or other items of value. This transaction generally occurs between the client and an individual, considered a third party, who is not an authorized Food Stamp Program retailer. The client sells his EBT card and PIN number and informs the third party of the account balance. In return the client receives cash for an amount less than the account balance, or he may receive items such as drugs, weapons or ammunition. The third party then transacts the EBT account with an authorized Food Stamp Program retailer engaged in trafficking. The client later notifies the department of social services that he has lost his card and requests a new one. It may be difficult

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obtaining evidence on a client selling his EBT card. While the reoccurring request to replace an EBT card is an indication of possible trafficking, such action is not sufficient to charge the client. At a minimum, the local agency is to send the client the warning letter identified as Form #3 in Part XIV of this manual.

Individuals involved in the above scenarios are in violation of §63.1-124.1 Code of Virginia. *Unauthorized Use of Food Stamps, Electronic Benefit Transfer Cards, and Fuel Assistance Prohibited; Penalties*. Federal statutes also apply. Trafficking is considered a Food Stamp Program intentional program violation, and if the Commonwealth's Attorney elects not to prosecute, clients can be taken to an

administrative disqualification hearing. The disqualification penalties for food stamp trafficking are found in Volume V, PART XVII (State Food Stamp Certification Manual.)

### **C. TRAFFICKING BY RETAILERS**

Retailers suspected of trafficking can be prosecuted in court, fined, and/or disqualified from participating in the Food Stamp Program. If a complaint does not warrant an investigation, the FNS Field Office may confront the retailer with information obtained from the Antifraud Locator of EBT Retailer Transactions (ALERT) System in the hope that the retailer will cease trafficking activity.

In trafficking cases, the retailer is presented a charge letter that identifies the illegal transactions that occurred. The retailer has an opportunity to respond to the charges before FNS imposes a permanent disqualification sanction. If the retailer does not respond or the response is unacceptable, permanent disqualification of the retailer is imposed immediately at the point the retailer receives a second letter. This letter notifies the retailer that the sanction is effective with receipt of the letter. The retailer has three days after receipt of the second letter to make his last deposit and turn in his authorization license and redemption certificates.

If requesting an appeal, the retailer must file for an Administrative Review within ten (10) days of receiving the second letter. If the request is not filed timely, the sanction is imposed. A request for a Judicial Review must be filed within thirty (30) days of receiving the Administrative Review's decision to sustain the FNS sanction. If the request is not filed timely, the sanction is imposed.

### **D. IDENTIFYING RETAILERS FOR INVESTIGATION**

Retailers are identified for investigations for the following reasons:

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ALERT data analysis by the FNS Field Office Complaints or tips received by the FNS/CB or USDA/OIG Stores fit a violation prone profile.

### **E. ROLES AND RESPONSIBILITIES OF AGENCIES INVOLVED IN FOOD STAMP PROGRAM EBT TRAFFICKING**

#### **1. FNS Mid-Atlantic Regional Office**

a) The state of Virginia is one of the jurisdictions under the following regional office:

Food and Nutrition Service/USDA

Mid-Atlantic Region

Mercer Corporate Park

300 Corporate Boulevard

Robbinsville, New Jersey 08691-1598

b) The Mid-Atlantic Regional Office's BRU monitors retailer EBT transactions through the ALERT System, and client transactions through the EBT Administrative Terminal. Also, the FNS Field Offices make recommendations for investigation to the FNS/CB or to the OIG. Upon completion of the investigation, the BRU is advised of the findings and forwards it to the FNS Field Office. If the investigative findings are positive for violations, the BRU issues a charge letter to the retailer, with a copy to the



FNS Field Office.

c) After considering the retailer's response to the charge letter, and the FNS Field Offices' recommendation, the BRU sends the retailer a second letter notifying the store of the final decision on the charge. If the decision is against the retailer, the retailer has appeal rights, first through an Administrative Review and then through Judicial Review. After the appeal timeframe is over, the Mid-Atlantic Regional Office forwards the state a listing of clients who were trafficking with the retailer, as well as documents related to the retailer's sanction.

## **2. FNS Field Offices**

Identifying information on the Field Offices, including street and email addresses, telephone numbers and Virginia jurisdictions served can be found at Chapter A, Part II, Appendix 2.

a) The FNS Field Offices monitors retailer and client transactions through ALERT and the EBT Administrative Terminal. The Field Offices request CB

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b) and OIG investigations when any violation is suspected and a charge cannot be substantiated by a case review. Upon issuance of a charge letter by the Mid-Atlantic Regional Office, the retailer has ten (10) days to contact the Field Office by phone or letter for an interview for an appointment to rebut the charge. The FNS Field Office documents the retailer's rebuttal or fact of nonresponse and sends it, along with a recommendation for sanction to the BRU for consideration.

c) In addition to the above responsibilities, the Field Offices consult with local departments of social services on client investigations that may impact investigations on retail establishments.

## **3. FNS Compliance Branch**

a) The state of Virginia is one of the jurisdictions under the FNS/CB Office for the Mid-Atlantic Region:

Officer-In-Charge

FNS/Compliance Branch Office

Post Office Box 307

Marlton, New Jersey 08053

Telephone: (856) 983-2928

Fax: (856) 983-6094

The Compliance Branch investigates both trafficking and lesser compliance violations. Requests for investigations come from the FNS Field Offices and from tips received by the CB. The CB Investigators pose as food stamp clients. The investigators are provided an EBT card and a PIN number associated with a fictitious food stamps case. The Fraud Unit provides the card and PIN number.

b) Investigative findings are forwarded to both the FNS Regional Office and the appropriate Field Office.

## **4. USDA Office of Inspector General (OIG) – Investigations**

a) The state of Virginia is one of the jurisdictions under the OIG Mid-Atlantic Regional Office. Their main office and in-state office are:

Regional Office:

Special Agent-in-Charge OIG – Investigations

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5601 Sunnyside Avenue, Suite 2-2230

Stop 5300, Beltsville, Maryland 20705-5300

Telephone: (301) 504-2000

Fax: (301) 504-2025

In-State Office: Special Agent OIG-Investigations Room 778

400 North Eighth Street

Richmond, Virginia 23240

Telephone: (804) 771-8484

Fax: (804) 771-8483

Email: [kshamman@oig.usda.gov](mailto:kshamman@oig.usda.gov)

b) The OIG investigates criminal violations of the Food Stamp Act, including food stamp EBT trafficking. The OIG also monitors retailer EBT activity through the ALERT System. Suspected trafficking is detected by the ALERT System, and referrals are received from FNS Regional and Field Offices as well as from the public.

c) Retailers perpetrating food stamp trafficking are prosecuted in either federal or state courts. Results of investigations and court dispositions are forwarded to both the FNS Regional Office and the FNS Field Office. The FNS Field Office initiates administrative action to disqualify the convicted retailers.

d) OIG also investigates client fraud if the overissuance is significant, or if trafficking and/or duplicate assistance fraud is being conducted interstate. Local agency fraud units requesting OIG assistance in these types of cases should contact the OIG Regional Office.

#### **5. Virginia Department of Social Services' Fraud Unit**

The Fraud Unit is responsible for providing OIG and CB Investigators with fictitious EBT accounts, including EBT card and PIN numbers used for undercover trafficking investigations.

The Fraud Unit monitors local agency EBT fraud activity through the Fraud FREE Database and prepares statistical reports as required.

#### **6. Local Department of Social Services' (LDSS) Fraud Unit**

With regard to the Food Stamp Program, local agency fraud units are to conduct investigations of client trafficking only. CB and OIG will conduct retailer trafficking investigations and, depending on the circumstances may conduct

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investigations on client trafficking. Such circumstances may include a client trafficking in several states, a client trafficking in high dollar amounts and a client

who is trafficking to obtain items such as drugs, guns and ammunition. Other federal law enforcement agencies as well as state and local police can be requested by OIG to assist in such investigations.

**a. Referrals Alleging Client EBT Trafficking**

Referrals can be received from sources such as the FNS Whistleblower Program, the State Fraud Hotline, referrals obtained through investigation of clients and through client interviews, the general public and from FNS Regional and Field Offices upon completion of an investigation of retailers.

**b. Investigation of Client EBT Trafficking Cases Involving Retailers**

1) *Upon receipt of a referral of an individual engaged in food stamp trafficking, from whatever source, the local agency fraud unit should immediately print the individual's transaction history from the EBT Administrative Terminal. This is necessary because the Administrative Terminal retains client transactions for a limited period of time. A delay in printing the transaction history could result in a loss of evidence substantiating trafficking.*

2) If the referral is a copy of the charge letter FNS sent to the retailer, the individual should be interviewed to obtain a statement of guilt. The charge letter will include a listing of transactions the individual made at the store. The listing of the individual's transactions can be shown to the individual.

3) If the referral is not a FNS charge letter, inquire into the client's transaction history to identify the store(s) in which trafficking appears to have occurred. Trafficking may have occurred if:

a) Excessive numbers of purchases are in dollar amounts only, with no cents.

b) Several purchases are made within a few minutes of each other. The first purchase may be for a very small dollar amount (client is checking the account balance) followed by a purchase with a large dollar amount.

c) Account is depleted in a short period of time.

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d) Purchases are made far from the client's neighborhood or place of employment.

e) Benefits not used for a significant period of time, which may indicate client is employed or has other resources.

f) Consistent visit to a particular small neighborhood grocery store when a large chain grocery store (having lower prices) is in the vicinity.

After determining the store in which trafficking was evident, contact the FNS Field Office to determine if the store is under investigation by OIG or CB. If so, the FNS Field Office will provide instructions on how to proceed with the local agency investigation. Generally, the local agency will be instructed not to confront the client, as to do so may jeopardize the ongoing investigation.

4) If permitted by the FNS Field Office, interview the client for the purpose of obtaining a statement of guilt. It is permissible to confront him with the transaction history printout. The signed statement of guilt should include the dates trafficking occurred (obtained from the transaction history), the name and address of the store(s) and the name of the owner/employee in the store(s), if known, who participated in the transaction(s). This information will be useful to FNS or OIG in their investigation of the retailer.

5) If the client is not to be prosecuted, he must either sign a waiver or be referred to an Administrative Disqualification Hearing (ADH). If the case is referred to an ADH, and a statement of guilt has not been signed, the burden of proof is on the local agency to provide clear and convincing evidence to obtain a determination of an intentional program violation. Although the client transaction history printout is considered circumstantial evidence, the Hearing Officer can accept and render a decision favoring the local agency based on such evidence.

**c. Determining the Amount Trafficked by the Individual**

If the referral is a copy of a FNS charge letter, the letter includes a listing of individuals who allegedly trafficked with the retailer as well as an itemized listing of their transactions. The transaction amounts stated on the listing are to be considered the dollar amount trafficked. With regard to a referral that is not a FNS charge letter, the local agency would determine through investigation, including analyzing the client transaction history, the amount trafficked.

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Additionally, the Fraud Investigator may strengthen the investigation by obtaining from the FNS Field Office an ALERT printout on the stores the individual frequented. Lastly, the fraud investigator should attempt to have the individual admit to the trafficking offense.

**d. Trafficking-Related Claims**

Claims arising from trafficking-related offenses are classified as intentional program violation claims only. The value of the trafficked benefits is determined from:

The individual's admission, Adjudication, or

The documentation that forms the basis for the trafficking determination.

Instructions for processing trafficking-related claims are found in the Food Stamp Certification Manual, Volume V, PART XVII.

**e. Referrals of Suspected Retailer Fraud**

The LDSS fraud units identify suspected retailer fraud based on complaints on clients and/or retailers and from sources other than the Food and Nutrition Service (FNS); that is, complaints received from the public.

The LDSS fraud unit contacts the FNS Field Office prior to conducting a confrontational interview with the recipient. The purpose of the contact is to advise the FNS Field Office of possible Food Stamp Program trafficking on the part of the retailer.

The FNS Field Office will instruct the LDSS fraud unit to either pursue the complaint by interviewing the client, or not to interview the client, because to do so would jeopardize an ongoing United States Department of Agriculture (USDA) investigation of the retailer.

**f. Investigation of Retailers**

*Only FNS and OIG are to initiate investigations on retailers.* If requested by FNS or OIG, local agency fraud units are to assist in such investigations by conducting interviews of clients whose names are provided by FNS or OIG. A signed statement from the client should include the dates trafficking occurred (obtained from the transaction history), the name and address of the store(s) and the name of the owner/employee in the store(s), if known, who participated the transactions. The signed statements are to be forwarded to the requesting FNS Regional or Field Office within fifteen (15) working days or less after receipt of the request.

FOR: FRAUD REDUCTION AND ELIMINATION EFFORT (FRAUD FREE MANUAL) DISTRIBUTION

FRAUD FREE MANUAL

TRANSMITTAL #2

This electronic transmittal contains the entire Fraud FREE Manual. The effective date of the revised manual is September 1, 2001. The manual was revised to:

- 1) remove references to the Department of Social Services' Office of Inspector General, which was eliminated due to an organizational change in 2000,
- 2) remove references of the Fraud, Special Investigations and Hotline Unit and replace with the Fraud Unit,
- 3) incorporate significant changes to the manual and
- 4) correct grammatical errors.

The Fraud Unit has prepared the Fraud Manual, as contained in Transmittal #2, for online viewing on the Department's Intranet Web site. This and future changes to the manual will be made to the on-line Fraud Manual. Notice of changes to the Fraud Manual will be conveyed by broadcast concurrent with the effective date.

Significant changes to this transmittal are:

Addition of PART XV, Electronic Benefits Transfer (EBT);

Addition of a referral criteria for front-end investigations;

Addition of web sites explaining the structure of Social Security Numbers and an inmate status locator;

Addition of instructions for requesting a record of benefits received on a purged TANF or Food Stamp case in ADAPT.

Deletion of forms 37, 38 and 39 pertaining to Division of Benefit Programs' requests for repayment of extra food stamps (demand letter) and payment agreement documents. These forms can be obtained from DBP's Website.

Sonia Rivero

Commissioner